



DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 362

[Docket No. 220909-0189]

RIN 0625-AB21

Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: In accordance with Presidential Proclamation 10414 and pursuant to its authority under section 318(a) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is issuing this final rule to implement Proclamation 10414. Specifically, Commerce is issuing a new rule that, in the event of an affirmative preliminary or final determination in the antidumping and countervailing duty (AD/CVD) circumvention inquiries described below, under Title VII of the Act, extends the time for, and waives, the suspension of liquidation, the application of certain AD/CVD duties, and the collection of cash deposits on applicable entries of certain crystalline silicon photovoltaic cells, whether or not assembled into modules, that are completed in the Kingdom of Cambodia (Cambodia), Malaysia, the Kingdom of Thailand (Thailand), and the Socialist Republic of Vietnam (Vietnam) using parts and components manufactured in the People's Republic of China (China), and that are not already subject to an antidumping or countervailing duty order.

DATES: This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Dana Moreland, Enforcement & Compliance (E&C) Communications office at (202) 482-0063 or *ECCOMMUNICATIONS@trade.gov*.

SUPPLEMENTARY INFORMATION:

GENERAL BACKGROUND

Presidential Proclamation 10414

On June 6, 2022, the President signed Proclamation 10414, “Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia.”¹ As part of the Proclamation, the President declared an emergency to exist for purposes of section 318(a) of the Act (19 U.S.C. 1318(a)) and made that section’s authority available to the Secretary according to the section’s terms. The Proclamation directs the Secretary to “consider taking appropriate action under section 318(a) ... to permit, until 24 months after the date of this proclamation or until the emergency declared herein has terminated, whichever occurs first, under such regulations and under such conditions as the Secretary may prescribe, the importation, free of the collection of duties and estimated duties, if applicable,” under sections 701, 731, 751 and 781 of the Act (19 U.S.C. 1671, 1673, 1675, 1677j) with respect to certain solar cells and modules exported from Cambodia, Malaysia, Thailand, and Vietnam, and that are not already subject to an antidumping or countervailing duty order as of the date of the Proclamation. Further, the Proclamation directs the Secretary to consider taking action to “temporarily extend during the course of the emergency the time therein prescribed for the performance of any act related to such imports.”²

¹ *Declaration of Emergency and Authorization for Temporary Extension of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia*, 87 FR 35067, 35068 (June 9, 2022) (Proclamation).

² Section 318(a) of the Act (19 U.S.C. 1318(a)) gives the Secretary of the Treasury authority, on a temporary basis, to take certain actions to respond immediately where the President declares the existence of an emergency. With respect to AD/CVD, this authority was delegated to the Secretary of Commerce in 1979, to be exercised in consultation with the Secretary of the Treasury. Section 5(a)(1)(e) of the Reorg. Plan No. 3 of 1979. Consistent with the Reorganization Plan and the Proclamation, we have consulted with the Department of Treasury and the Department of Homeland Security.

On July 1, 2022, Commerce published a proposed rule to implement Presidential Proclamation 10414, with public comments due August 1, 2022.³ Sixteen comments were submitted, with eleven generally supportive of the *Proposed Rule* and five generally opposed.

New Procedures in Accord with Presidential Proclamation 10414

Commerce is currently conducting circumvention inquiries to determine whether imports of crystalline silicon photovoltaic cells, whether or not assembled into modules, which are completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China and exported to the United States (hereinafter “Southeast Asian-Completed Cells and Modules” or “SA-Completed Cells and Modules”), are circumventing the AD and CVD orders on solar cells and modules from China.⁴ To respond to the emergency declared in the Proclamation, and pursuant to the Proclamation and section 318(a) of the Act, in this final rule, Commerce is adding Part 362 to extend the time for, and waive, the actions provided for in 19 CFR sections 351.226(l)(1), (2) and (3), if applicable, in the ongoing circumvention inquiries covering SA-Completed Cells and Modules. SA-Completed Cells and Modules are by definition not covered by the scope of the AD and CVD orders on solar cells and modules from China, and consistent with the Proclamation, the extension and waiver described in this final rule will apply only to imports of SA-Completed Cells and Modules that enter into the United States, or are withdrawn from warehouse, for consumption, before the Date of Termination (defined as June 6, 2024, or the date the emergency described in Presidential Proclamation 10414 has been terminated, whichever occurs first). In addition, this rule applies only to SA-Completed Cells and Modules that are utilized in the United States by the Utilization Expiration Date, which is 180 days after the Date of Termination. The final rule defines “utilization” and “utilized” to mean that the SA-Completed Cells and Modules will be used or

³ *Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414*, 87 FR 39426 (July 1, 2022) (*Proposed Rule*).

⁴ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders*, 87 FR 19071 (April 1, 2022).

installed in the United States. Furthermore, this final rule provides that, in the event of an affirmative determination of circumvention, no resulting AD/CVD estimated duties or duties will be applied to SA-Completed Cells and Modules that have been entered into the United States, or withdrawn from warehouse, for consumption before the Date of Termination and for use by the Utilization Expiration Date.

As explained above, this final rule applies to SA-Completed Cells and Modules. This rule does not apply to solar cells and modules which are manufactured and exported from China and are subject to the existing antidumping or countervailing duty orders on solar cells and modules from China (A-570-979; C-570-980) (China Solar Orders). Nor does it apply to solar cells and modules that are exported from Cambodia, Malaysia, Thailand, and Vietnam that are already subject to the China Solar Orders.⁵ In addition, this rule does not apply to certain solar products that are manufactured and exported from Taiwan and are subject to the existing antidumping duty order on solar products from Taiwan (A-583-853) (Taiwan Solar Order), as well as certain solar products that are exported from Cambodia, Malaysia, Thailand, and Vietnam but are (already) subject to the order covering Taiwanese merchandise (*i.e.*, the country of origin is considered Taiwan).

Commerce will continue to use the certification requirements in place as an enforcement tool to monitor imports of solar cells and modules that are either Chinese or Taiwanese in origin and covered by the current AD/CVD duty orders.

Under this regulation, Commerce takes the following actions:

- 1) Commerce shall instruct U.S. Customs and Border Protection (CBP) to discontinue the suspension of liquidation and collection of cash deposits for any SA-Completed Cells and

⁵ Commerce has determined under the China Solar Orders that the country-of-origin is determined by where the solar cell is manufactured. If solar cells from China are sent to Cambodia, Malaysia, Thailand and Vietnam, and then incorporated into solar modules and panels, the solar products incorporating such cells and exported from those four countries remain subject to the China Solar Orders. See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

Modules that were suspended, in connection with initiation of the circumvention inquiries, pursuant to § 351.226(l)(1). If, at the time Commerce issues instructions to CBP, the entries are suspended only for purposes of the circumvention inquiries, Commerce will direct CBP to liquidate those entries without regard to AD/CVD duties and refund those cash deposits collected pursuant to the circumvention inquiries.

2) If, before the Date of Termination, Commerce issues an affirmative preliminary determination in a circumvention inquiry covering SA-Completed Cells and Modules, Commerce will not, at that time, direct CBP to suspend liquidation and collect cash deposits of estimated AD/CVD duties for entries of that merchandise entered, or withdrawn from warehouse, for consumption before, on, or after the date of initiation of that circumvention inquiry and that are to be utilized in the United States by the Utilization Expiration Date, notwithstanding § 351.226(l)(2). In the event there are such entries of SA-Completed Solar Cells and Modules before, on, or after the date of initiation of the circumvention inquiry that will not be utilized in the United States by the Utilization Expiration Date, Commerce will direct CBP to suspend liquidation and collect cash deposits of estimated AD/CVD duties for those entries.

3) If, before the Date of Termination, Commerce issues an affirmative final determination in a circumvention inquiry covering SA-Completed Cells and Modules, Commerce will not, at that time, direct CBP to suspend liquidation and collect cash deposits of estimated AD/CVD duties for entries of that merchandise entered, or withdrawn from warehouse, for consumption before, on, or after the date of initiation of that circumvention inquiry and that are to be utilized in the United States by the Utilization Expiration Date, notwithstanding § 351.226(l)(3). In the event there are such entries of SA-Completed Solar Cells and Modules before, on, or after the date of initiation of the circumvention inquiry that will not be utilized in the United States by the

Utilization Expiration Date, Commerce will direct CBP to suspend liquidation and collect cash deposits of estimated AD/CVD duties for those entries.

4) If, after the Date of Termination, Commerce issues an affirmative final determination in a circumvention inquiry covering SA-Completed Cells and Modules and entries of SA-Completed Cells and Modules that will not be utilized in the United States by the Utilization Expiration Date, Commerce will direct CBP to order suspension of liquidation of those entries and the collection of cash deposits on those entries.

5) If, before or after the Date of Termination, Commerce issues an affirmative final determination in a circumvention inquiry covering SA-Completed Cells and Modules and those SA-Completed Cells and Modules will be utilized by the Utilization Expiration Date:

- a. Commerce will direct CBP to liquidate entries of those SA-Completed Cells and Modules entered, or withdrawn from warehouse, for consumption before the Date of Termination without regard to AD/CVD duties if liquidation instructions were issued to CBP pursuant to a different segment of the proceeding in accordance with section 751 of the Act that would have otherwise applied to those entries.
- b. Commerce will direct CBP to commence suspension of liquidation of the SA-Completed Cells and Modules, as applicable, and collect cash deposits of estimated AD/CVD duties at the applicable rate only on SA-Completed Cells and Modules entered, or withdrawn from warehouse, for consumption on or after the Date of Termination.

Consistent with the authority granted by the Proclamation, Commerce notes that these actions ensure that duties or estimated duties will not be collected on entries of SA-Completed Cells and Modules that entered the United States both before and after the signing of the Proclamation, so long as they enter, or are withdrawn from warehouse, for consumption, before

the Date of Termination. Furthermore, all entries following the effective date of the final rule must be utilized in the United States by the Utilization Expiration Date, which is 180 days following the Date of Termination, to benefit from this rule.

Commerce is invoking all authorities provided for in the Proclamation, pursuant to section 318(a) of the Act, as well as Commerce's authority to issue regulations pertaining to section 781 of the Act (19 U.S.C. 1677j), to take these steps to respond to the emergency declared in the Proclamation. Section 351.226(l) governs when merchandise found to be circumventing an AD or CVD order should be subject to suspension of liquidation and cash deposit requirements. Thus, in light of the emergency, Commerce is extending the time period established by regulation for Commerce to instruct CBP to begin suspension of liquidation and cash deposit requirements for SA-Completed Cells and Modules entered, or withdrawn from warehouse, for consumption, as well as the date on which suspension of liquidation and cash deposit requirements will begin, including for entries of SA-Completed Cells and Modules that may have continued to be suspended under § 351.226(l)(1) and are to be utilized in the United States by the Utilization Expiration Date.⁶

In addition, Commerce is permitting, for the duration provided for in the Proclamation, the importation, free of the collection of AD/CVD duties and estimated duties, if applicable, on SA-Completed Cells and Modules that are to be utilized in the United States by the Utilization Expiration Date. Under this final rule, cash deposits will not be collected on imports of SA-Completed Cells and Modules that were entered, or withdrawn from warehouse, for consumption before the Date of Termination and that are to be used in the United States by the Utilization Expiration Date.

⁶ This rule in no way affects CBP's ability to act pursuant to its own independent authorities, including its ability to determine if the declared country of origin of merchandise upon importation has been misidentified and to suspend liquidation and collect deposits of estimated AD/CVD duties on entries subject to the China Solar Orders or Taiwan Solar Order.

Finally, if Commerce issues a final determination of circumvention, Commerce will instruct CBP to suspend liquidation and collect cash deposits on SA-Completed Cells and Modules that are entered, or are withdrawn from warehouse, for consumption on or after the Date of Termination.

This action will ensure that, once this emergency has passed, suspension of liquidation and collection of cash deposits of any AD/CVD estimated duties and duties will be instituted and applied prospectively, to post-Date of Termination entries, as set forth by statute and regulation.

EXPLANATION OF CHANGES FROM THE PROPOSED RULE TO THE FINAL RULE AND RESPONSES TO COMMENTS

In the *Proposed Rule*, Commerce invited the public to submit comments,⁷ and received 16 submissions from interested parties, including domestic producers, exporters, importers, non-profit organizations, and trade associations. We considered the merits of each submission. In response, Commerce is implementing the following modifications to the *Proposed Rule*:

- Several definitions are clarified. The definition of “Applicable Entries” is amended to clarify that such entries must be utilized in the United States by the “Utilization Expiration Date,” a new term. “Utilization” and “utilized” are also new terms, included to address comments concerning stockpiling. The phrase “subject to the Solar Circumvention Inquiries” previously located in the “Applicable Entries” definition now appears in the definition of “Southeast Asian-Completed Cells and Modules” as this location more clearly indicates the merchandise covered by the circumvention inquiries.
- The heading of § 362.103(a) now reads “Importation of applicable entries free of duties and estimated duties.” The words “estimated duties” have been added to better reflect the Proclamation and what the Secretary intends to cover, consistent with the request of commenters.

⁷ *Proposed Rule*, 87 FR at 39426.

- Section 362.103(a) now reads “antidumping and countervailing duties and estimated duties.” The words “duties and” have been added in light of the previous change and the Secretary’s intention to apply the waiver to both duties and estimated duties.
- Portions of § 362.103(b)(1) and 362.103(b)(1)(i) now reference the Secretary, in place of Commerce, to conform with statutory and regulatory language. Further, the first sentence of § 362.103(b)(1)(i) has been revised to indicate that the Secretary shall instruct CBP to discontinue the suspension of liquidation of entries and collection of cash deposits for any SA-Completed Cells and Modules that were suspended pursuant to § 351.226(l) of this chapter in connection with the initiation of the Solar Circumvention Inquiries.
- Section 362.103(b)(1)(iii) has been added to outline the Secretary’s subsequent instructions to CBP in the event of an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries.
- Section 362.103(b)(2) now addresses the steps the Secretary will take in the event that the emergency is terminated prior to June 6, 2024, but following an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries. Under this section, in that event, the Secretary will inform CBP of the Date of Termination and issue suspension of liquidation and cash deposit instructions. Further, under that scenario, Commerce would be able to order the suspension of liquidation and collection of cash deposits on merchandise that entered on an alternative date following the Date of Termination, if the use of an alternative entry date were appropriate, depending on the direction of the implementation of the termination of the emergency.
- Section 362.103(b)(3) now addresses the steps the Secretary will take in the event that the emergency is terminated on June 6, 2024, following affirmative preliminary or final determinations of circumvention in the circumvention inquiries. Under this section as well, the Secretary will inform CBP of the Date of Termination and issue suspension of liquidation and cash deposit instructions.

- Section 362.104 changes the singular term “certification” to the plural “certifications” as the Secretary may require that entities other than the importer provide a certification.

The preamble to the *Proposed Rule* provides extensive background, analysis, and explanation which are relevant to these final regulations. Accordingly, to the extent that the public seeks a more detailed and comprehensive understanding of these regulations, we advise not only considering the preamble to these final regulations, but also the analysis and explanations in the preamble to the *Proposed Rule*.

The following contains a summary of the comments we received and Commerce’s responses to those comments. In addition, Commerce provides explanations of any changes from the *Proposed Rule*, either in response to comments or that it deemed appropriate.

1. *AD/CVD Duties Waived Under Section 318 of the Tariff Act of 1930*

Some commenters assert that Commerce does not have the authority to waive duties imposed pursuant to AD/CVD laws. One commenter writes, for instance, that “once antidumping and countervailing duty orders are issued, the duties are to remain in effect for at least five years, when they undergo a five-year review by Commerce and the International Trade Commission.” The commenter adds that, under Commerce’s regulations, if an affirmative circumvention determination is made, Commerce “*will* direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties” on the goods found to be circumventing (emphasis in original). The commenter thus concludes that the proposed temporary waiver of duties and estimated duties is “inconsistent with the law and agency regulations.”

Another commenter makes the related argument that section 318 does not authorize “interfere[ence]” in AD/CVD proceedings or the “dictat[ion]” of the remedies that result from those proceedings, claiming, “it is *ultra vires* for the President to authorize across-the-board duty relief for *any* product” (emphasis in original).

Response:

Commerce disagrees with these commenters. Section 318 of the Tariff Act of 1930, as amended, states that, in appropriate circumstances, the President may authorize the Secretary to admit goods “free of duty.” The provision’s text gives no indication that AD/CVD duties are excluded from this encompassing language. More than that, section 5(a)(1)(E) of the Reorg. Plan No. 3 of 1979 explicitly transferred section 318 functions related to AD/CVD duties from the Secretary of the Treasury to the Secretary of Commerce—indicating that it was clearly contemplated that section 318 could be applied to AD/CVD duties.

As noted in the preamble to the *Proposed Rule*, Commerce is continuing to conduct the circumvention inquiries at issue under its normal procedures.⁸ By its terms, section 318 permits the waiver of duties that would otherwise apply under law. While Commerce is continuing its circumvention inquiries under its normal procedures, section 318 extends to any duties that may result from those inquiries that would otherwise apply before the period of emergency concludes. Furthermore, as discussed, there is no reason in the text or the surrounding history to think AD/CVD duties are beyond the scope of section 318; to the contrary, Reorg. Plan No. 3 of 1979 indicates that section 318 *can* apply to AD/CVD duties.

2. *Solar Cells and Modules as “Other Supplies for Use in Emergency Relief Work” Within the Meaning of 318(a)*

Four commenters contend that Commerce is not permitted to provide for duty-free entry of SA-Completed Cells and Modules because solar cells and modules do not constitute the types of “supplies for use in emergency relief work” contemplated by section 318(a) of the Act. They assert instead that such supplies are limited to goods necessary to sustain health and survival during times of war or natural disasters.

One commenter states that the *Proposed Rule* is consistent with the authorities given to Commerce through the Proclamation.

Response:

⁸ See *Proposed Rule*, 87 FR at 39429.

Commerce disagrees with certain commenters' assertions that solar cells and modules cannot be considered "supplies for use in emergency relief work" within the meaning of section 318(a).

Commerce has previously rejected arguments that this term, as contemplated by section 318(a), is narrowly limited to humanitarian goods provided on a short-term basis. Rather, "[w]hat supplies might be needed for use in emergency relief work will depend on the circumstances of a specific declared emergency and the particular needs of persons affected by that emergency."⁹ Nor does section 318(a)'s text limit the duration that an emergency may continue or the time to respond to it.

Here, through the Proclamation, the President has declared an emergency exists "with respect to the threats to the availability of sufficient electricity generation capacity to meet expected customer demand."¹⁰ Consistent with the Proclamation, this rule provides for the temporary importation free of AD/CVD duties and estimated duties, if otherwise applicable, for certain SA-Completed Cells and Modules. Electricity is a basic necessity of life in the United States similar to housing, food, and water. It enables necessary medical care, national defense, and provides for essential communications, and for health and safety in extreme temperatures. The Proclamation declares that immediate action is needed to ensure access to a sufficient supply of solar modules to assist in meeting the United States' electricity generation needs. The waiver of AD/CVD duties on the specified goods will provide relief to this emergency by encouraging imports and increasing solar energy capacity. Accordingly, the specified goods qualify as "other supplies for use in emergency relief work" in connection with the emergency declared such that Commerce may permit the temporary importation of such products free of AD/CVD duties and estimated duties.

⁹ *Procedures for Importation of Supplies for Use in Emergency Relief Work*, 71 FR 63230, 63231, 63233 (October 30, 2006).

¹⁰ See Proclamation, 87 FR 35067, 35068 (June 9, 2022).

Moreover, there is historical precedent for invoking the statute to permit the duty-free importation of a broader variety of goods than certain commenters' proposed limitation. For example, President Truman invoked section 318 to permit "the importation free of duty of . . . timber, lumber, or the products suitable for the construction or completion of housing accommodations," after proclaiming "an unprecedented shortage of housing, particularly for veterans of World War II and their families" in Proclamation No. 2708.¹¹ The waiver of the duties was designed to "increase the available supplies" of such goods and thereby facilitate construction. Like housing, electricity is a basic necessity of life in the United States, and the present action to ensure sufficient electricity generating capacity parallels the prior waiver of duties on the importation of housing construction supplies to ensure sufficient housing.

3. *Whether There is a Clearly Defined Emergency For Which Commerce Could Provide a Remedy*

Two commenters cite import statistics from select periods and countries to argue that imports of solar products have increased, and that therefore there is no emergency with regard to such products. Further, relying on data from the National Renewable Energy Laboratory, one commenter alleges declining prices for solar panels provides evidence that there is no shortage.

Eight commenters agree that there is an emergency as declared by the President's Proclamation. Three commenters emphasize that there is undoubtably an electricity emergency, exacerbated by drought conditions, heatwaves, the war in Ukraine, and other factors stretching the United States' electricity supply. Eight commenters highlight that electricity is a basic utility essential for modern life through, for example, the operation of schools, hospitals, transportation, defense, and businesses. Many of these commenters also assert that solar energy, including access to a sufficient supply of solar cells and modules, is critical in addressing this emergency. In addition, several commenters provided data on how uncertainty and delays have significantly impacted the overall solar energy market.

¹¹ *Proclamation No. 2708*, 11 FR 12695 (October 29, 1946) (Emergency Due to Housing Shortage-Free Importation of Timber, Lumber, and Lumber Products).

Response:

Whether there is an emergency is not the subject of Commerce’s rulemaking—the declaration of emergency is committed by section 318 to the President’s discretion, and the President exercised that discretion in issuing the Proclamation. In any event, Commerce disagrees with commenters who argue the Proclamation lacks a defined emergency. The Proclamation details that multiple factors including disruptions to electricity markets as a result of the war in Ukraine and extreme weather events exacerbated by climate change are threatening the United States’ ability to provide sufficient electricity generation to consumers.¹² The Proclamation discusses drought conditions and heatwaves that are simultaneously causing projected electricity supply shortfalls and record electricity demand.¹³ And it further notes that, as a result, the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation have both warned of near-term electricity reliability risks in their recent summer reliability assessments.¹⁴

In drafting this final rule, Commerce also considered a Department of Energy (DOE) report released in June 2022 entitled “*Acute Shortage of Solar Equipment Poses Risks to the Power Sector*” (DOE Report) and other documentation identified and cited in this Preamble.¹⁵ The DOE Report concluded, based on multiple citations and sources, that “trade and supply-chain frictions have resulted in an acute shortage of solar photovoltaic (PV) equipment in the United States that risks abruptly slowing the rate of solar PV installation.”¹⁶ The DOE Report explained that DOE “estimates that solar equipment shortages could reduce solar PV deployment by 12-15 gigawatts (GW) over the next year, equivalent to the electricity needs of more than 2

¹² Proclamation, 87 FR at 35067.

¹³ *Id.*

¹⁴ *Id.*; see also generally North American Electric Reliability Corporation, *2022 Summer Reliability Assessment* (May 5, 2022), available at https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf; Federal Energy Regulatory Commission, *Summer Energy Market and Reliability Assessment*, at 13-16 (2022), available at <https://www.ferc.gov/media/report-summer-assessment-2022>.

¹⁵ See U.S. Dept. of Energy, *Acute Shortage of Solar Equipment Poses Risks to the Power Sector*, at 2 (June 2022), available at <https://www.energy.gov/sites/default/files/2022-06/June%202022%20DOE%20Solar%20Market%20Update.pdf>.

¹⁶ *Id.* at 1.

million homes.”¹⁷ Further, the DOE Report explained that the reliability risks referenced above relate “to the lack of sufficient generation capacity combined with the growing prevalence of extreme weather in the form of heat waves, drought, and wildfires.”¹⁸

In the same document, DOE explained that “domestic solar manufacturing capability is simply not sufficient to meet demand. The nation’s 7.5 GW of current domestic module production capacity comprises less than one-fourth of near-term market demand and less than one-tenth what would be required to meet the country’s climate targets and energy security needs.”¹⁹ DOE explained that “establishing a solar component manufacturing facility, whether polysilicon production, ingots, cells, wafers, mounting structures or inverters, requires time – from one to four years,” spotlighting that even under the best of conditions, today’s current solar energy demands cannot be satisfied solely by domestic solar production and will not be satisfied by domestic solar production in at least the immediate future.²⁰ Thus, DOE concluded that meeting “near-term demand will, by necessity, require reliance on both domestic and international supply chains. Absent an ability to access both sources of supply, PV project cancellations and delays will pose risks to the provision of reliable, affordable electricity supply while also imperiling achievement of the nation’s energy security and climate objectives.”²¹

¹⁷ *Id.* Since the DOE Report was written, three additional months of data have been reported, revealing two offsetting effects. First, electric utilities are delaying solar projects. Over the first six months of 2022, capacity additions were less than half of what the industry had previously planned to install in those months. *See* U.S. Energy Information Administration (EIA), Utility-Scale Solar Projects Report Delays (Aug. 11, 2022), <https://www.eia.gov/todayinenergy/detail.php?id=53400>. As a result, EIA’s anticipated demand for utility-scale solar capacity additions for the next year (July 2022 through June 2023) has increased to 23 GW. *See* EIA Short-Term Energy Outlook, Table 8b (August 9, 2022), <http://www.eia.gov/outlooks/steo/>. This is higher than the 22 GW in 2022 and 19 GW in 2023 assumed in the DOE Report, which cited an earlier EIA report based on December 2021 data. This change *increases* the anticipated annual capacity shortfall by 2 GW. Second, solar equipment imports have not dropped by as much as anticipated in the DOE Report. Including three additional months of data (April–June 2022) from the same Census-corrected data set used in the DOE Report gives imports averaging 1.8 GW per month for the 12 months ending June 2022 and 2.2 GW per month for the previous 12-month period. That is a 0.4 GW per month reduction in imports instead of the 0.6 GW per month reduction used in the DOE Report (*See* DOE Report’s Figure 1). This change *decreases* the annual solar capacity shortfall by 2 GW. The updated estimates of supply and demand offset each other, supporting continued applicability of the 12-15 GW shortage reported in the DOE Report when including the demand for small-scale solar and the need for roughly 1.3 GW of solar panels for every 1 GW of solar plant capacity installed on the grid.

¹⁸ DOE Report at 1.

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *Id.*

Despite previous anticipated estimates that “solar PV was anticipated to account for approximately 50% of newly installed generation capacity this year and next,” DOE explained that “PV module (i.e., panel) imports have been falling abruptly rather than increasing to meet” America’s solar PV demand.²² Pointing to data from the United States International Trade Commission (USITC), DOE explained that from “July 2021 through March 2022, imports fell to 1.7 GW per month down from a prior average of 2.3 GW per month.”²³ DOE explained that “[t]wo-third of imports (an average of 1.5 GW per month in 2020 and 2021) were crystalline silicon modules from Cambodia, Malaysia, Thailand and Vietnam.”²⁴

DOE explained that the “equipment shortage” was also “hitting domestic module production,” explaining that in 2021, “there was 5 GW of domestic module production, of which 3 was crystalline silicon modules that depend on imported solar cells for production,” with “over 1 GW of solar cells” imported from Cambodia, Malaysia, Thailand and Vietnam.”²⁵ Thus, DOE concluded that “[c]easing cell imports from those countries would threaten at least 1 GW of domestic module production.”²⁶

DOE further pointed to the conclusions reached by the North American Electric Reliability Corporation (NERC) that warned that because of “extreme weather in the form of heat waves, drought, and wildfires,” “the entirety of the central and western United States is at a high or elevated risk.”²⁷ In addition, DOE pointed to various problems faced by Arizona, New Mexico, California and Texas that lead to energy-related problems because of “solar installation delays.”²⁸

²² *Id.*

²³ *Id.* (citing module import data from the United States International Trade Commission. 2022. “DataWeb.USITC.GOV.” May 16, 2022).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 4 (citing the North American Electric Reliability Corporation, *2022 Summer Reliability Assessment* (May 5, 2022), available at https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf).

²⁸ DOE Report at 5.

Further, DOE explained that the “war in Ukraine, in addition to the end of many COVID-19 restrictions, has led to significant increases in natural gas and coal prices that have in turn increased electricity prices. Average wholesale electricity prices since the start of the war have been roughly double those of the same months in 2021.”²⁹

In addition, information provided by several commenters confirms the electricity emergency declared by the Proclamation.³⁰ That information indicates an increasing frequency of extreme weather presenting a public health and safety risk and serious challenges the United States faces with regard to its electricity supply.³¹ In the conclusion to its report, DOE explained that “most of the polysilicon, ingots, wafers, solar glass and cells for those modules come from imports” and that “today’s domestic module production capacity comprises less than one-fourth of near-term market demand and less than one-tenth what would be required to meet the country’s climate and energy security needs.”³² Thus, to address America’s energy needs, DOE concluded that for the “next several years,” the United States “will, by necessity, require both domestic and international supply chains.”³³

²⁹ *Id.*

³⁰ See, e.g., *Building a Better Grid Initiative To Upgrade and Expand the Nation’s Electric Transmission Grid To Support Resilience, Reliability, and Decarbonization*, 87 Fed. Reg. 2769, 2769 (U.S. Dept. of Energy, Jan. 19, 2022); see also *FERC Acts to Boost Grid Reliability Against Extreme Weather Conditions* (June 16, 2022), available at <https://www.ferc.gov/news-events/news/ferc-acts-boost-grid-reliability-against-extreme-weather-conditions> (the chairman of the U.S. Federal Energy Regulatory Commission, Richard Glick, explained, “[i]ncreasingly frequent cold snaps, heat waves, drought and major storms continue to challenge the ability of our nation’s electric infrastructure to deliver reliable affordable energy to consumers.”); Scott Disavino, *US. Power Companies Face Supply-Chain Crisis this Summer*, Reuters (June 29, 2022), available at <https://www.reuters.com/business/energy/us-power-companies-face-supply-chain-crisis-this-summer-2022-06-29/> (“U.S. power companies are facing supply crunches that may hamper their ability keep the lights on as the nation heads into the heat of summer and the peak hurricane season.”); see also Robinson Meyer, *America’s Approach to Energy Security Is Broken*, The Atlantic (March 19, 2022) available at <https://www.theatlantic.com/science/archive/2022/03/energy-independence-gas-prices/627117/> (“For the first time in many years, America has no credible plan for how maintain its energy security in a geopolitical crisis.”).

³¹ See Tim McLaughlin, *Creaky U.S. Power Grid Threatens Progress on Renewables, EVs*, Reuters (May 12, 2022), available at <https://www.reuters.com/investigates/special-report/usa-renewables-electric-grid/> (indicating that extreme weather events have caused widespread failures in power systems, including Gulf Coast hurricanes, West Coast wildfires, Midwest heatwaves, and devastating winter weather in Texas); see also *June 2022: U.S. Dominated by Remarkable Heat, Dryness, National Oceanic and Atmospheric Administration* (July 11, 2022), available at <https://www.noaa.gov/news/june-2022-us-dominated-by-remarkable-heat-dryness> (explaining that the U.S. has experienced nine separate billion-dollar weather disasters in 2022, including extreme drought, tornadoes, severe weather, and hail storms).

³² *Id.*

³³ *Id.*

Considering DOE’s conclusions in the DOE Report, as well as the various other documents identified and cited in this Preamble and the resources provided by several of the parties who filed comments in response to the proposed rule, the record supports the conclusions of the President that an electricity supply emergency exists in the United States, and that to address the energy supply emergency with solar energy technology, the United States must rely, in part, on imported solar modules for the immediate future.

As noted above, some commenters disagree with the conclusions that an emergency exists, but Commerce finds that certain data used by those critics are unpersuasive. For example, one commenter points to decreasing prices to argue that there is not a solar panel shortage. The National Renewable Energy Laboratory report upon which this commenter relied indicates that the dollar value of imported panels decreased, but this total dollar value reflects both unit price and the volume of imported units, which decreased. In actuality, the same report shows that the price per watt of imported solar panels, which is the more relevant price metric because it reflects per unit costs, has been increasing since mid-2020.³⁴

Moreover, in response to commenters’ assertions regarding increasing imports of solar modules, Commerce has reviewed the trade data available from the U.S. Census as of August 2022 and determined that imports (in watts) for crystalline-silicon modules in the first half of 2022 were down by roughly 25 percent from the first half of 2021.³⁵ In addition, combined imports of crystalline-silicon solar modules specifically from Malaysia, Vietnam, Thailand and Cambodia—the four countries at issue in the circumvention inquiries—were down by over 30 percent from the first half of 2021.³⁶ To the extent commenters referenced select import data,

³⁴ See David Feldman et al., *Spring 2022 Solar Industry Update*, National Renewable Energy Laboratory (Apr. 26, 2022) at slide 62, available at <https://www.nrel.gov/docs/fy22osti/82854.pdf> (NREL Spring Update).

³⁵ See U.S. Census Bureau data for HTS codes 8541.40.60.15 and 8541.43.00.10, Second Unit of Quantity (watts), available at <https://usatrade.census.gov>. A commenter’s assertion that imports of solar modules are higher for the first five months of 2022 compared to the same period in 2021 is potentially based on erroneous Census data for Turkey and Thailand that has since been corrected. See U.S. Census Bureau, *Corrections to 2022 Data*, available at <https://www.census.gov/foreign-trade/statistics/corrections/index.html>.

³⁶ See U.S. Census Bureau data for HTS 8541.40.60.15, 8541.43.00.10, available at <https://usatrade.census.gov>, Second Unit of Quantity (watts). Considering imports of all modules, i.e., CSPV and thin-film, the data show a

such as import data from only one or two countries, such discussion offers a limited picture of the broader electricity emergency threatening the United States industry as described in the Proclamation.

Thus, in sum, Commerce agrees with DOE's assessments of the nature of the emergency declared by the Proclamation. Commerce also finds it appropriate that this final rule provides a remedy that addresses that emergency and allows for importation of certain SA-Completed Cells and Modules without requiring the suspension of liquidation and the collection of cash deposits until the emergency has passed, in accord with the Proclamation and section 318(a) of the Act.

4. *Link Between the Declared Emergency and Remedy Provided*

Three commenters assert that the Proclamation and Commerce's *Proposed Rule* do not make any effort to link the proposed remedy of tariff relief to an actual emergency and "emergency relief work" as required by section 318(a). One commenter argues that the Proclamation makes broad references to potential drought conditions and strain on the electricity grid but fails to establish which imports are necessary for use in such "emergency relief work" in accordance with section 318(a). Three commenters argue that the *Proposed Rule* is not sufficiently tailored because it provides duty relief to a broad category of products and relates little to the emergency in the Proclamation. One commenter also argues that solar energy cannot solve the current emergency crisis in the short term because solar energy accounted for only 2.8 percent of total U.S. energy generation capacity in 2021. This commenter also argues that even if solar cells and modules are "emergency relief items" within the meaning of section 318(a), the relief provided in the *Proposed Rule* extends beyond that needed to address the alleged emergency of "solar projects being postponed or cancelled" because the duty relief provided in the *Proposed Rule* would apply to solar cells and modules imported for a project that may not be

reduction of about 20 percent in imports from these four countries and a reduction of about 15 percent for imports from all countries between the same two half-year periods. *Id.* for HTS codes 8541.40.60.15, 8541.43.00.10, 8541.40.60.35 and 8541.43.00.80. Considering imports of CSPV cells, the data show that while imports from these four countries has risen, total imports from all countries declined slightly over the same time. *Id.* for HTS codes 8541.40.60.25, 8541.42.00.10. Encouraging imports of solar cells is expected to address the electricity emergency by improving the supply of components needed for solar products.

completed for years after the Date of Termination and have no specific intended use.

Accordingly, the commenter contends, any emergency duty relief afforded should relate only to imported SA-Completed Cells and Modules designated for stalled projects. In addition, one commenter claims that solar products subject to the inquiries should not be encouraged because they are produced predominantly by fossil fuels.

Seven commenters assert that there have been significant project delays including halted shipments, idled factories, and losses in electricity capacity which increase costs for consumers and reliance on fossil fuel. For example, one commenter provided that 24 GWs of solar installations and \$30 billion in investments from 2022-2023 are in jeopardy without the final rule. This commenter relied on a letter from twenty-two U.S. senators and surveys from industry groups to support its assertion that tariffs from affirmative circumvention determinations would threaten the solar industry. Another commenter, citing a survey of investors and developers in solar energy, asserts that if the final rule is not promulgated, U.S. solar projects would face a crisis, and the United States would not meet its electricity generation needs while also achieving its clean energy goals to address the climate crisis. Many of these commenters explain that the rule would allow for necessary projects to move forward and increase the amount of energy generated through solar power to meet United States' electricity generation needs and clean energy goals.

Response:

As a preliminary matter, as explained above, the DOE Report indicates that two-thirds of imports of solar modules in 2020 and 2021 to the United States were exported from Cambodia, Malaysia, Thailand, and Vietnam.³⁷ Furthermore, the DOE Report also indicates that today's domestic module production capacity comprises less than one-fourth of near-term market demand, and less than one-tenth of what would be required to meet the country's climate and

³⁷ DOE Report at 2.

energy needs.³⁸ So to the extent that certain commenters claim that there is an inadequate link between claims of a need for a greater number of imported solar modules in the near-term, and this final rule, which allows for the temporary importation of certain solar modules without AD or CVD duties and estimated duties from the countries that have recently provided two-thirds of the imports of solar modules, Commerce disagrees with that assessment.

The Proclamation describes the need for robust and reliable electric power as a basic necessity in the United States and as critical for national defense. It explains that to address the electricity emergency detailed above and ensure electric resource adequacy, utilities and grid operators must build new capacity through new solar installations. While solar power accounted for 4 percent of total electricity generation in 2021,³⁹ according to an Energy Information Administration (EIA) publication upon which DOE relied for part of its analysis in the DOE Report, that data also shows that solar power was the largest source of new generating capacity in 2021⁴⁰ and that added solar capacity was expected to account for over half of new electric sector capacity in 2022 and 2023.⁴¹ The Proclamation states that “[t]he unavailability of solar cells and modules jeopardizes those planned additions, which in turn threatens the availability of sufficient electricity generation capacity to serve expected customer demand.”⁴² As discussed above, DOE has estimated “that solar equipment shortages could reduce solar [photovoltaic] deployment by 12-15 gigawatts (GW) over the next year, equivalent to the electricity needs of more than 2 million homes.”⁴³

³⁸ *Id.* at 8.

³⁹ See EIA Short Term Energy Outlook, available at <https://www.eia.gov/outlooks/steo/archives/May22.pdf>. Table 8b lists 113.9 billion kWh of utility-scale solar and 49.8 billion kWh from small-scale solar in 2021. Table 7b lists 3962.8 billion kWh total generation in 2021. $(113.9+49.8)/3962.8 = 4.1\%$. One commenter asserted that solar power produced 2.8% of U.S. electricity generation in 2021; however, this figure is only for utility scale plants.

⁴⁰ See NREL Spring Update at slide 26.

⁴¹ See *U.S. Energy Information Administration, Short Term Energy Outlook* (May 10, 2022), available at <https://www.eia.gov/outlooks/steo/archives/May22.pdf>.

⁴² See Proclamation, 87 FR at 35067.

⁴³ U.S. Dept. of Energy, *Acute Shortage of Solar Equipment Poses Risks to the Power Sector*, at 1 (June 2022), available at <https://www.energy.gov/sites/default/files/2022-06/June%202022%20DOE%20Solar%20Market%20Update.pdf>.

Furthermore, in response to the arguments made by certain commenters that the breadth of the proposed rule was not sufficiently tailored, Commerce disagrees. This final rule is calibrated in multiple ways. The rule applies only to solar cells and modules: 1) exported from the four Southeast Asian countries at issue that have been manufactured using certain Chinese inputs; 2) which will be utilized in the United States within 180 days after the Date of Termination (*i.e.*, the Utilization Expiration Date); and 3) which enter the United States no later than June 6, 2024, if not earlier.

With respect the duration of the rule, in particular, as the Proclamation notes, “The Federal Government is working with the private sector to promote the expansion of domestic solar manufacturing capacity, including our capacity to manufacture modules and other inputs in the solar supply chain, but building that capacity will take time.”⁴⁴ As DOE explained in its Report, the timelines for establishing a solar component manufacturing facility can range from “one to four years.”⁴⁵ Accordingly, this relief is not open-ended—rather it is temporary and calibrated to align with the timeline necessary for new domestic solar production plants to get set up and begin production.

With respect to the claim that the regulations should apply only to stalled solar projects, the Proclamation not only discussed concerns with stalled solar projects, but discussed the electricity emergency broadly, including that solar capacity additions could help ensure sufficient electricity generation to ensure electricity grid resource adequacy, achieve U.S. climate and clean energy goals, and help combat rising energy prices.⁴⁶ Accordingly, Commerce does not find it appropriate to limit the remedy, as one commenter suggests, only to imports of SA-Completed

⁴⁴ See Proclamation, 87 FR at 35067. DOE has stated that “today’s domestic module capacity comprises less than one-fourth of near-term market demand and less than one-tenth of what would be required to meet the country’s climate and energy security needs.” U.S. Dept. of Energy, *Acute Shortage of Solar Equipment Poses Risks to the Power Sector*, at 8 (June 2022), available at <https://www.energy.gov/sites/default/files/2022-06/June%202022%20DOE%20Solar%20Market%20Update.pdf>.

⁴⁵ DOE Report at 8.

⁴⁶ See Proclamation, 87 FR at 35067.

Cells and Modules that are designated for stalled projects. More than that, such a proposed remedy would be difficult to administer.⁴⁷

In addition, Commerce disagrees with the commenter that asserts importation of these certain solar cells and modules should not be promoted because they are produced using fossil fuels. The International Energy Agency has stated that solar panels produced by fossil fuels only need to operate for several months to offset their manufacturing emissions, whereas the average solar panel has a lifetime of around 25-30 years.⁴⁸

As identified by a number of commenters, the tariff relief provided in the *Proposed Rule* could stimulate United States' solar projects and assist the United States in meeting its electricity generation needs while also achieving clean energy goals to address the climate crisis. These commenters, several of whom are or represent investors and developers of solar projects in the United States, explained that collectively billions of dollars in solar energy projects are in jeopardy without the tariff relief provided in the *Proposed Rule*.⁴⁹ Commerce believes that this final rule will provide stability and commercial certainty for its duration. Accordingly, Commerce continues to find that the remedy provided by this final rule is consistent with the emergency declared by the Proclamation and is sufficiently tailored to target imports of cells and modules that can help address the identified emergency.

5. *Proclamation 10414 and the National Emergencies Act*

⁴⁷ Moreover, limiting the remedy only to stalled projects could create perverse incentives by effectively encouraging additional projects to stall, thereby undercutting the aims of the remedy.

⁴⁸ See International Energy Agency, *Special Report on Solar PV Global Supply Chains* at 8 (July 2022), available at <https://iea.blob.core.windows.net/assets/4eedd256-b3db-4bc6-b5aa-2711ddfc1f90/SpecialReportonSolarPVGlobalSupplyChains.pdf>.

⁴⁹ See Tomich, Jeffrey, *Solar Market Turmoil Delays Ind. Coal Shutdown* (May 5, 2022), available at <https://www.eenews.net/articles/solar-market-turmoil-delays-ind-coal-shutdown/>; Salt River Project, *Coolidge Expansion Project FAQ, How does growing demand contribute to resource constraints?*, available at <https://www.srpnet.com/grid-water-management/grid-management/improvement-projects/coolidge-expansion-project-faq>. Office of the Governor of California, Letter to U.S. Department of Commerce Secretary Gina M. Raimondo (April 27, 2022), available at <https://s3.documentcloud.org/documents/21761581/newsom-letter.pdf>; Mangieri, Gina, *Power Cost Hike, Supply Crunch Ahead as Last Hawaii Coal Plant Closes* (June 24, 2022), available at <https://www.khon2.com/always-investigating/power-cost-hike-supply-crunch-ahead-as-last-hawaii-coal-plant-closes/>.

One commenter notes that Proclamation 10414 potentially fails to conform with the requirements of the National Emergencies Act (citing 50 U.S.C. 1601 *et seq*).

Response

As an initial matter, 19 U.S.C. 1318(a) recognizes that the President has authority to declare emergencies arising under the Tariff Act of 1930, as amended. As explained elsewhere in our response to comments, the President has declared an emergency under that provision and the remedies available under that provision are being applied here. We do not agree that Proclamation 10414 fails to conform with the requirements of the National Emergencies Act. Pursuant to 50 U.S.C. 1621, the President is permitted to exercise any special or extraordinary powers as authorized by the Acts of Congress. Pursuant to 50 U.S.C. 1631, the President must specify the provisions of law under which he proposes that he, or other officers, will act, and such provision must be made in either the declaration of a national emergency, or by subsequent executive orders published in the Federal Register and transmitted to Congress. The President explicitly invoked 19 U.S.C. 1318(a) in the Proclamation and identified it as the provision of law pursuant to which Commerce officials were to take action.

6. *The President's Actions as They Relate to the Injury Determination by the U.S. International Trade Commission*

One commenter argues that 19 U.S.C. 1318(a) does not authorize the President to invalidate the USITC's injury determinations and that the President cannot use 19 U.S.C. 1318(a) to control the Commission or its determinations.

Response:

The President's authority over the USITC and its determinations is not at issue in this final rule. The actions Commerce has taken pursuant to 19 U.S.C. 1318(a) and Commerce's regulatory authority, including promulgating this final rule, in no way affect the Commission's injury determination with respect to the China Solar Orders. As discussed in more detail above, these authorities coexist with the Commission's authority to issue an injury determination.

Moreover, as explained above, by its terms, section 318(a) permits the waiver of duties that would otherwise apply under law.

7. *Short Supply*

One commenter asserts that the *Proposed Rule* appears to be an iteration of the “short supply” amendments to exclude from the scope of an order products that the domestic industry did not produce, or did not produce in sufficient quantities, that have been rejected both administratively and in Congress in the past. This commenter argues that because U.S. lawmakers have opted not to include “short supply” exemptions in trade laws, Commerce should not do so through the *Proposed Rule*.

Response:

Neither the Proclamation nor the preamble to the *Proposed Rule* indicate that this regulation is a “short supply” rule. The *Proposed Rule* has been developed pursuant to the Proclamation, which invoked section 318(a) and declared a national emergency. The final rule is not amending the statute; rather, it is a temporary remedy provided in response to the Proclamation issued pursuant to the statute.

8. *Declining to Use Part 358 of Commerce’s Regulations in Addressing the Declared Emergency*

Four commenters argue that instead of adopting the *Proposed Rule*, Commerce should use the regulations at 19 CFR Part 358, which also address section 318. Commenters advanced arguments on policy grounds—such as arguing that applying Part 358 would better support the existing United States trade regime—and some also argued that Commerce should use Part 358 based upon prior statements Commerce made when originally promulgating Part 358.

Commenters also critiqued the rationale offered in the *Proposed Rule* for declining to apply Part 358—that Part 358 applied only to goods to which an existing AD/CVD order applied, whereas the relevant goods here are presently subject to no such order. Some commenters argued that an affirmative determination in the circumvention inquiries would mean that the goods under consideration were *always* subject to the relevant order, likening a circumvention determination

to a scope ruling. Further, some commenters argued that even if the goods were not presently subject to the order, in the event of a final affirmative determination they would then become subject to an order, and so Part 358 should at least be used from that time onward. Another commenter argued goods cannot both be treated as not subject to an order but also need to be permitted to be entered free of duty. In addition, a commenter suggested that, in declining to use Part 358, Commerce failed to avoid duplicative regulations, contrary to Executive Order 12866.

Response:

Commerce believes its use of this final rule, rather than Part 358, to be both lawful and appropriate.

First, Commerce reiterates its view that Part 358, by its terms, applies to goods that are already subject to an order.⁵⁰ The goods at issue in these final regulations are not presently subject to any such order, even if they could become subject to an order later. Further, even if Part 358 might otherwise apply, Commerce is not prohibited from using different procedures, promulgated via notice-and comment-rulemaking, when those procedures are better-suited to address the emergency at hand; and Commerce concludes the procedures articulated in the final rule are indeed better suited to address the instant emergency.

As noted above, commenters who contend that Part 358 should apply make different arguments. One such argument is that under Commerce's recent modifications to its scope regulations, Commerce has explained that if Commerce determines that a product is in-scope as part of a scope determination under 19 CFR 351.225, then that product has always been within the scope of the order.⁵¹ They argue that because circumvention proceedings under 19 CFR 351.226 are similar to scope determinations, the same understanding applies to circumventing merchandise.

⁵⁰ For instance, Part 358 requires parties requesting duty-free treatment state the AD/CVD order case number, indicating that these goods are already subject to an order.

⁵¹ See *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52312 (September 20, 2021).

Contrary to this assertion, Commerce’s reasoning with respect to scope rulings does not apply to circumvention determinations.⁵² Relying on the same rationale would conflate the basis for a scope ruling under 19 CFR 351.225 and a circumvention determination under 19 CFR 351.226. While scope rulings under 19 CFR 351.225 determine whether a product “has always been covered by the scope of” an order,⁵³ circumvention inquiries seek to determine whether, under section 781, it is appropriate to expand the scope of the order to include merchandise which was originally not covered by the scope.⁵⁴ As a result, circumvention determinations typically limit the inclusion of that merchandise in the scope to the date of initiation of the circumvention inquiry. We acknowledge there are exceptions to the applicable date in the regulations for both scope rulings and circumvention determinations, but the general rules reflect the differences between the two findings that products should be covered by the scope of an order (or orders).

Even assuming *arguendo* Commerce’s reasoning about scope determinations were to apply to circumvention determinations, entries would not actually be covered by the order until Commerce makes an affirmative circumvention determination. Prior to an affirmative determination, entries of merchandise subject to the circumvention inquiry are not subject to an order. In the present case, Commerce has not issued a preliminary affirmative circumvention determination, much less a final affirmative circumvention determination. Thus, entries of allegedly circumventing SA-Completed Cells and Modules are not covered by any order at this time.

⁵² See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52344 (September 20, 2021) (stating that the circumvention framework, under 19 [CFR] 352.226(l) “differs from the scope framework” under 19 CFR 351.225(l)).

⁵³ 19 CFR 351.225(a).

⁵⁴ See *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1337-38 (Fed. Cir. 2016) (“In order to effectively combat circumvention of antidumping duty orders, Commerce may determine that certain types of articles are within the scope of a duty order, even when the articles do not fall within the order’s literal scope. The Tariff Act identifies four articles that may fall within the scope of a duty order without unlawfully expanding the order’s reach[.]”).

In addition, contrary to one commenter's assertion, our reliance on section 318(a) to promulgate this rule is consistent with our reasoning not to use Part 358. This rule provides a remedy aligned with the Proclamation's call for duty-free entry of certain solar cells and modules and the temporary extension of action related to such imports. Should Commerce make affirmative determinations in the circumvention proceedings, such entries would be subject to AD/CVD estimated duties and duties absent this rule. Thus, although the applicable solar cells and modules were not subject to duties as of the date of the Proclamation, this rule creates certainty and provides for a remedy up until the Date of Termination in accordance with the Proclamation in the event these products may be subject to estimated duties and duties in the future.

Another argument advanced in the comments is that, in the event of an affirmative final determination of circumvention, Part 358 should at least apply to any imported SA-Completed Cells and Modules that are imported between that date and the Date of Termination. Again, Commerce disagrees, concluding that Part 358 applies to supplies that are subject to an existing AD/CVD order at the time the Secretary determines to permit importation of those supplies free of AD/CVD duties. A different reading, whereby two sets of section 318 protocols would apply to the same set of goods at different points in time, would complicate the consistent and efficient administration of regulations designed to address an emergency.

In any event, while Commerce promulgated Part 358 as a method to address emergencies declared pursuant to section 318(a), Commerce is not prohibited from using different procedures, promulgated via notice-and-comment rulemaking, when those procedures would be better suited to address emergencies. The products at issue were not covered by an AD/CVD order on the date of the Proclamation, and Commerce has determined that in light of the emergency declared in the Proclamation, the procedures outlined in the final rule are better suited than, and not

duplicative of, those outlined in Part 358.⁵⁵ The electricity emergency requires immediate relief as it is impacting an entire industry and a significant number of Americans. The final rule more efficiently and appropriately addresses the emergency declared in the Proclamation.

9. *Application of the Final Rule to Pre-June 6, 2022 Entries*

Multiple commenters criticize the application of the proposed rule to pre-June 6, 2022 entries—that is, to entries which entered prior to the Proclamation’s signing date, arguing that the Proclamation does not permit “retroactive” effect. For example, some commenters contend that any relief must be limited to goods that entered on or after the date the Proclamation was signed, while others assert the opposite, *i.e.*, that the agency may lift suspension on pre-Proclamation entries without collecting cash deposits or duties based on principles of consistency, fairness, and certainty.

Response:

Commerce disagrees that it is exercising section 318 authority outside the period of the emergency, or that its actions are “retroactive” as typically understood. The pre-Proclamation goods at issue are unliquidated—that is, there has yet to be a “final computation or ascertainment of duties.”⁵⁶ In this final rule, Commerce is taking action now (*i.e.*, during the period of the emergency) to extend the period before it directs CBP to suspend liquidation and collect cash deposits and to waive any AD/CVD estimated duties and duties for these unliquidated goods.⁵⁷ In other words, the final rule is stating, ahead of any imposition of such duties, that there will be no such duties. Such a decision is prospective in its application.

⁵⁵ The use of Part 358 would also unduly limit the scope of goods that would be eligible for relief. Part 358 requires that a party mail an advance request, in triplicate, to the Secretary asking for approval to import goods free of duty. If the Secretary approves the request, then any goods must be imported within 60 days of the party’s notification of the Secretary’s approval. 19 CFR 358.103(a), (b). So presumably any solar cells and modules that have entered up to this point—even cells and modules that entered after the Proclamation—would not be eligible for relief because they were not approved as duty-free prior to entry. Such an outcome here would upset the industry’s reasonable reliance that at least post-Proclamation imports would be free of AD/CVD duties—and such reliance was an important policy objective of the Proclamation.

⁵⁶ See 19 CFR 159.1.

⁵⁷ With respect to the extension of actions, under section 318, whereby the Secretary of Commerce is authorized to “extend . . . the time . . . for the performance of any act,” Commerce is effectively extending the time period established by regulation to begin suspension of liquidation and cash deposit requirements. See *Proposed Rule*, 87 FR at 39429.

In any event, Commerce believes that it has authority under section 318 and its general rulemaking authority to apply this final rule to relevant entries that entered the country prior to the date the Proclamation was signed, but that remain unliquidated today. The AD/CVD system in the United States is a retrospective one, under which “final liability for [AD/CVD] duties is determined after merchandise is imported.”⁵⁸ Under this retrospective system, if Commerce makes an affirmative preliminary determination as part of a circumvention inquiry, it will direct CBP to suspend liquidation of entries that entered on or after the date of publication of the initiation notice of the circumvention inquiry and to collect cash deposits on those entries, pending the final outcome of the circumvention inquiry.⁵⁹ Prior to a preliminary determination, upon initiation, Commerce also notifies CBP to continue suspending entries of products subject to the circumvention inquiry that were already suspended, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order.⁶⁰

In the ordinary course, if there is an affirmative final determination in a circumvention inquiry, suspension and collection of cash deposits will continue on the merchandise at issue until such time as there are affirmative final results issued in connection with an administrative review or on an annual basis, if no administrative review is requested, assessing duties on the relevant entries.⁶¹ In other words, entries are suspended and cash deposits are collected to liquidate the entries (*i.e.*, the final ascertainment of duties) at a later point in time. Accordingly, because the declaration of an emergency in the Proclamation authorizes the waiver of “duties and estimated duties” under the AD and CVD laws, it also authorizes, as relief for the emergency, the waiver of the suspension of liquidation and collection of cash deposits and permits liquidation of entries without regard to AD and CVD duties.

⁵⁸ 19 CFR 351.212(a); sections 703(d), 705(c), 706, 733(d), 735(c), and 736 of the Act (discussing suspension, collection of cash deposits, and assessment of duties).

⁵⁹ See 19 CFR 351.226(l)(2).

⁶⁰ See 19 CFR 351.226(l)(1).

⁶¹ See section 751 of the Act.

In addition to the AD and CVD laws being part of the Tariff Act of 1930, as amended, so too is the emergency statute at issue – section 318. Therefore, if the President determines that an emergency exists under section 318 (as is the case here), and empowers agencies to take certain actions to alleviate the emergency under the AD and CVD laws, the passage by Congress of these provisions under the same Act supports reading them in harmony.⁶² Accordingly, just as Commerce could take action today, under the AD/CVD system established under the Tariff Act, to affect the duty status of goods that previously entered the country but that are still unliquidated, section 318 of the Tariff Act likewise allows Commerce to take action today to affect the duty status of those same unliquidated entries.⁶³ Moreover, the “retrospective” application of duties and estimated duties, as it relates specifically to circumvention proceedings under section 781 of the Tariff Act, is authorized by Commerce’s implementing regulations.⁶⁴ Thus, Commerce may also use notice-and-comment rulemaking to address the declared emergency.⁶⁵

10. *Market Certainty*

In the *Proposed Rule*, Commerce offered multiple policy reasons for applying the rule to pre-Proclamation entries, one of which was that it would help avoid market uncertainty and confusion. Three commenters dispute this rationale.

⁶² See *FDA v. Brown & Williamson Tobacco*, 529 U.S. 120, 132–133 (2000) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme. . . . A court must therefore interpret the statute as a symmetrical and coherent regulatory scheme, . . . and fit, if possible, all parts into an harmonious whole.”).

⁶³ Notably, because there has not been any determination of circumvention, all of the SA-Completed Solar Cells and Modules, entering the United States post-initiation of the circumvention inquiries, are entering free of AD and CVD estimated duties and are not being suspended. This rule will maintain that status quo—whether it be through the non-collection of cash deposits and not ordering suspension in the first place or permitting liquidation, should all other reasons for suspension expire, for entries suspended under earlier instructions Commerce issued to CBP at the initiation of the circumvention inquiries. Thus, the rule avoids some of the typical concerns that can accompany “retroactive” applications of law.

⁶⁴ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52344, 52346 (September 20, 2021).

⁶⁵ Inasmuch as some commenters argue that the Proclamation did not intend to reach pre-Proclamation entries, Commerce notes that the President directed the Secretary to consider permitting duty-free importation of the relevant goods “until 24 months after the date of this proclamation or until the emergency declared herein has terminated.” While this language specifies an end date to consider for duty-free treatment, it does not specify a start date, and Commerce believes it is appropriate, as well as consistent with the usual operation of our circumvention proceedings, to treat the goods in a uniform fashion until the Date of Termination.

Three different commenters, who generally support the *Proposed Rule*, maintain that subjecting pre-June 6th entries to duties based on the Solar Circumvention Inquiries, would “sow confusion in the market” and discourage solar product production. Nine commenters generally indicate prevalent uncertainty in the solar market.

Response:

The purpose of the Proclamation is to increase the supply of United States solar energy for electricity generation purposes. Commerce has determined that applying the final rule to pre-Proclamation entries will further that goal.

As noted in the *Proposed Rule*, the President has determined that an emergency exists that affects both current and potential future energy projects that depend on solar module imports. Consistent with the purpose of the Proclamation to allow for more imports, entities that use SA-Completed Cells and Modules should not be financially restricted from investing in near-term or future solar capacity additions because they had to pay cash deposits on merchandise that entered the United States just a few months, or even days, before the signing of the Proclamation. Indeed, as mentioned in the *Proposed Rule*, there may be ongoing projects that use some modules imported before the Proclamation’s signing and other modules imported afterwards. It is consistent with the aims of the Proclamation to take steps to ensure that such firms have the capital needed to complete these projects and to otherwise build capacity.

Commerce acknowledges that concerns about potential market uncertainty or confusion are inherently speculative, but these concerns are not its only reason for its decision, and three commenters concur that applying duties to pre-Proclamation entries would “sow confusion in the market” and otherwise discourage production of crystalline silicon photovoltaic solar products. Given that the final assessment of duties may not be calculated immediately, firms that imported prior to the Proclamation might reasonably be uncertain as to how much they will ultimately owe, and this uncertainty might discourage further investment. Commerce thus agrees with commenters who argued that the application of the final rule to pre-Proclamation entries is likely

to “promot[e] the market stability that the President sought to achieve when he issued the Proclamation.”

Additionally, Commerce finds that the uniform treatment of merchandise covered by a circumvention inquiry is desirable because it is consistent with the broader trade system. Even as the invocation of section 318 is an unusual event, the application of the final rule to pre-Proclamation entries ensures that merchandise that is otherwise considered the same under the circumvention laws and regulations is treated the same.

Ultimately, based on the comments and submissions provided by commenting parties, Commerce concludes that applying this final rule to pre-Proclamation entries is reasonable considering the emergency declared by the President and as further discussed in the Preambles to the *Proposed Rule* and this final rule.

11. *Merchandise That Entered Before Initiation of the Solar Circumvention Inquiries*

Under 19 CFR 351.226(l)(1), upon notice of the initiation of a circumvention inquiry, Commerce is to also notify CBP of the initiation of the inquiry and “direct the Customs Service to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order.” One commenter observes that, at the time of the initiation of the circumvention inquiries, Commerce instructed CBP only to continue to suspend entries that were already suspended according to the China Solar Orders underlying the circumvention inquiries. Its comments elaborate that, although 19 CFR 362.103(b)(1)(i) indicates that Commerce “will instruct CBP to discontinue such suspension of liquidation and collection of cash deposits based on the circumvention inquiry,” because Commerce sent its original instructions only with respect to entries that were already suspended pursuant to AD/CVD orders, directing CBP to lift suspension pursuant to 19 CFR 362.103(b)(1)(i), as formulated in the *Proposed Rule*, could create confusion and inadvertently result in CBP liquidating entries that should remain

suspended under the AD/CVD orders. Accordingly, the commenter claims there is no need for 19 CFR 362.103(b)(1)(i).

Response:

Section 19 CFR 351.226(l)(1) speaks to continuing the suspension of liquidation of, and collecting deposits on, entries subject to the circumvention inquiries that “were already subject to suspension.”⁶⁶ Consistent with the Proclamation, it is appropriate that Commerce notify CBP, pursuant to the final rule, that, if entries at this point are suspended solely as a result of the circumvention inquiries, then there is no longer a reason to continue suspension of the relevant entries.

After consideration of this commenter’s concern, however, Commerce has clarified the final rule in 19 CFR 362.103(b)(1)(i) to reflect that the instructions Commerce issues to CBP will address only entries currently suspended pursuant to 19 CFR 351.226(l)(1), rather than to any entries that were suspended pursuant to the China Solar Orders underlying the circumvention inquiries.

12. Commerce’s Mission

Several commenters contend that this rulemaking is counter to Commerce’s mission to ensure a level playing field for U.S. industries and establishes dangerous precedent for Commerce and potentially other agencies.

Response:

We disagree that this rulemaking is counter to Commerce’s mission or creates a dangerous precedent for the enforcement of AD/CVD laws or for other agencies. Separate from its usual administration of the AD/CVD laws under the Act, the same Act also authorizes Commerce to take steps in response to an emergency declaration by the President.

⁶⁶ See 19 CFR 351.226(l)(1) (“[Commerce] will notify [CBP] to continue suspension of liquidation of entries of products subject to a circumvention inquiry that were already subject to the suspension of liquidation”).

More broadly, Commerce's administration of the AD/CVD laws pursuant to the Act is robust, and enforcement is the key focus for each of the more than 650 AD/CVD orders in place. This final rule is limited to extending and waiving the application of certain regulations, if otherwise applicable, to certain solar cells and modules subject to circumvention inquiries currently before Commerce. The circumvention proceedings themselves continue uninterrupted, and if Commerce finds the existence of circumvention when the inquiries conclude, the remedies to the declared emergency will apply under this final rule only during the emergency period. In addition, as detailed above, we have made certain modifications to the regulations that require SA-Completed Cells and Modules that benefit from this rule be utilized (*i.e.*, will be used or installed in the United States) by the Utilization Expiration Date, which is 180 days following the Date of Termination.

13. Impact on Other Policies

Several commenters assert that the *Proposed Rule* undermines U.S. policies to counter China's harmful and predatory trade practices, such as violations of intellectual property rights and human rights abuses. One commenter also asserts that the *Proposed Rule* undermines the U.S. climate goal agenda because it allows unfairly traded Chinese solar modules and cells to dominate the U.S. market, and because China uses significant quantities of fossil fuels to produce solar modules and cells.

Response:

We disagree that the final rule undermines U.S. policy with respect to China trade practices. U.S. trade policy reflects numerous initiatives to address unfairly traded imports, injurious import surges, intellectual property theft, human rights abuses, and forced labor practices. The final rule is a limited step to extend and waive the application of certain regulations, if otherwise applicable, to solar cells and modules, exported from identified Southeast Asian countries, that are subject to certain circumvention inquiries currently before Commerce. Even with respect to trade in solar cells and modules from these Southeast Asian

countries, Commerce's conduct of the circumvention proceedings themselves continues uninterrupted.

With respect to U.S. climate agenda goals, the final rule is a temporary measure designed to address the Proclamation's declared electricity emergency by encouraging the further importation of solar cells and modules. Commerce would note that insofar as commenters argue that a strong domestic solar manufacturing industry will further the climate agenda over the long run, and that this final rule could detrimentally affect the development of the industry, Commerce believes that the final rule is tailored to provide the necessary remedy the United States needs to address the energy supply emergency at this moment in time, for the immediate future. The measure has been calibrated in both scope and duration and it is a part of a broader group of government actions designed to support the domestic solar manufacturing industry, while still pursuing climate-friendly energy goals.⁶⁷ In addition, we note, as discussed above, that even solar panels that are created using fossil fuels will offset their emissions within months of operation, while the average solar panel is expected to last decades.

Insofar as commenters express concerns regarding China's labor practices, those comments are outside the scope of this rulemaking. The application and enforcement of the Uyghur Forced Labor Prevention Act is unaffected by the invocation of section 318 or this final rule, as is CBP's broader authority to prevent merchandise produced using forced labor from being imported into the United States.⁶⁸

14. *Stockpiling*

⁶⁷ Several commenters incorporate evidence showing that much needed progress in solar panel deployment is critical to achieving the government's goals of decarbonization and addressing climate change. See U.S. Dept. of Energy, *Solar Futures Study*, (Sept. 2021), pages 1-22 (detailing the Biden Administration's goal of decarbonizing the electricity grid by 2035 and how solar plays a major role due to its uniquely modular characteristics with high deployment rates estimated to have long-term benefits in the trillions of dollars from climate change mitigation and avoided public health costs) <https://www.energy.gov/eere/solar/solar-futures-study>; see also American Clean Power, *Clean Power Annual Market Report 2021* (2022) (including diagrams showing that a 100 MW solar project avoids 139,000 metric tons of emissions each year and can power 20,000 American homes, and that all wind and solar capacity installed in 2021 can reduce annual emissions by an estimated 398 million metric tons) <https://cleanpower.org/wpcontent/uploads/2022/05/2021-ACP-Annual-Report-Final-Public.pdf>.

⁶⁸ See 19 U.S.C. 1307.

Three commentators expressed concerns that Commerce's decision to impose estimated duties prospectively has broad ramifications that could allow for unfairly traded imports to be stockpiled in the U.S.

Response:

It is not Commerce's goal to have merchandise that enters before the Date of Termination be used in projects long into the future, as the emergency declared by the President exists at this very moment. Accordingly, Commerce has decided to make certain modifications to the regulations to address this issue.

First, Commerce has added a requirement that all merchandise that benefits from this rule must be utilized in the United States by the Utilization Expiration Date, which is 180 days following the Date of Termination. The final rule defines "utilization" and "utilized" to mean the SA-Completed Cells and Modules will be used or installed in the United States. The addition of this requirement to the definition of "Applicable Entries" makes clear that this rule is not intended to benefit those who would stockpile SA-Completed Cells and Modules for an extended period of time.

Furthermore, the final rule includes a provision which directs Commerce to issue instructions to CBP directing it to suspend liquidation and collect cash deposits following affirmative preliminary and final circumvention determinations if certain entries are subject to the Solar Circumvention Inquiries but will not be utilized in the United States by the Utilization Expiration Date. Only merchandise that is covered by the Solar Circumvention Inquiries, is utilized by the Utilization Expiration Date, and in most cases, enters before the Date of Termination, should benefit from this rule.

15. Certifications

One commenter expresses concern that the *Proposed Rule* imposes no certification or other documentation requirements to ensure that the duty-exempted imports of solar products qualify as supplies for use in emergency relief work.

Response:

Consistent with the President's Proclamation and to provide relief from the emergency identified by the President, the final rule provides for the duty-free importation of SA-Completed Cells and Modules until the Date of Termination and extends the time for certain actions provided for in Commerce's regulations pertaining to circumvention inquiries. However, as detailed above, Commerce is making certain modifications to the regulations that now require the SA-Completed Cells and Modules that benefit from this rule to be utilized (*i.e.*, to be used or installed in the United States) by the Utilization Expiration Date, which is 180 days following the Date of Termination. In addition, this final rule at § 362.104 does not preclude Commerce from requiring a certification for SA-Completed Cells and Modules pursuant to § 351.228 in the event of an affirmative preliminary or final determination in the solar circumvention inquiries. Accordingly, Commerce does not find it necessary to impose the certification requirements requested by this commenter in this final rule.

16. Termination Before a Final Circumvention Inquiry, Early Termination, and Notice to CBP

Multiple commenters point out that the *Proposed Rule* did not address the scenario in which the President determines that the emergency is over before Commerce issues a final circumvention determination, following an affirmative preliminary circumvention determination.

One commenter requests Commerce clarify that, should the Date of Termination occur after publication of an affirmative preliminary determination, but before the publication of a final determination, Commerce should immediately instruct CBP to suspend liquidation of entries of merchandise determined to be circumventing the China Solar Orders and begin collecting cash deposits.

Five other commenters request that Commerce's final rule provide additional predictability in the event of an early termination of the emergency. They argue that the 24-month period to address the emergency is unlikely to change, because solar manufacturing and deployment require years of advance deployment, and the industry will not be able to solve the

crisis in only two years. Still, they request that Commerce provide a “wind down” period to give purchasers time to adjust to a sudden change and avoid market uncertainty. They say that such a wind down period will help in an industry with long and complex project timelines. Specifically, they request that Commerce clarify in the final rule that in the event of a termination prior to June 6, 2024, no AD/CVD cash deposit requirements or duty liability would become effective as to entries made during the four months following the Date of Termination.

Finally, one commenter notes that the *Proposed Rule* does not speak to how CBP would be notified of the Date of Termination. They argue that a final rule should clarify that Commerce would be responsible for immediately notifying CBP of the Date of Termination and instructing CBP to take appropriate action triggered by the Date of Termination.

Response:

Commerce has taken the concerns expressed by the commenters into consideration, and in § 362.103(b) has added a new subsection (3) and revised subsection (2). Section 362.103(b)(2) now addresses the scenario in which the emergency is declared terminated “early,” following an affirmative preliminary or final circumvention determination, while § 362.103(b)(3) addresses the scenario in which the emergency terminates on June 6, 2024, following an affirmative preliminary or final circumvention determination. Commerce agrees that whenever the emergency terminates, it should notify CBP as to the Date of Termination. Accordingly, in the final rule, § 362.103(b)(2) states that if the emergency described in the Proclamation is terminated before June 6, 2024, Commerce will direct CBP to suspend liquidation and collect cash deposits on merchandise that enter on or after an appropriate date which is on or after the Date of Termination.

Under that provision, Commerce would consider the implementation and direction of the President in terminating the emergency for purposes of determining an appropriate entry date on or after the Date of Termination for which liquidation of entries will be suspended and on which cash deposits will be collected on unliquidated entries of SA-Completed Cells and Modules.

Furthermore, in the final rule, § 362.103(b)(3) states that if the emergency is not terminated earlier than June 6, 2024, and there is an affirmative preliminary or final circumvention determination, Commerce will issue instructions to CBP informing it that June 6, 2024 is the Date of Termination, and directing CBP to begin suspending liquidation and requiring cash deposits for unliquidated entries of SA-Completed Cells and Modules that are entered, or withdrawn from warehouse, for consumption on or after that date.

With respect to the request for a “grace period” when an emergency is declared terminated on a date earlier than June 6, 2024, Commerce understands the need for market certainty and predictability for exporters and importers, but Commerce finds that this request is premature. The President determined in the Proclamation that an emergency exists, and we do not know at this time if the emergency will continue to exist through June 6, 2024 or will be terminated earlier than that date.

Furthermore, even if the emergency is terminated earlier than that date, we do not know the means by which the President would implement and direct such a termination. For example, six months after issuing Presidential Proclamation 2708, which declared an emergency and allowed for the duty-free importation of timber, lumber, and lumber products, President Truman subsequently issued Presidential Proclamation 2735 on June 28, 1947, which terminated the emergency.⁶⁹ Although he issued the Emergency Termination Proclamation on June 28, the Proclamation did not provide for the termination of the emergency until August 15, 1947—6 weeks later. In other words, President Truman granted the lumber industry 6 weeks to prepare for the end of duty-free importation. We understand that some commenters are requesting a similar type of notification ahead of time to get their affairs in order, should the President declare the emergency terminated before June 6, 2024.

⁶⁹ *Proclamation No. 2735*, 12 FR 4255 (July 2, 1947) (Importation of Timber, Lumber and Lumber Products) (Emergency Termination Proclamation).

If the President decides that the emergency should be terminated on a date before June 6, 2024, as explained above, Commerce has adjusted the language of § 362.103(b)(2) so that Commerce has greater flexibility to issue instructions to CBP that provide for an appropriate alternative date of entry for the application of suspension of liquidation and collection of cash deposits, if necessary, depending on the President’s execution of any termination of the emergency.

17. Waiver of Both Duties and Estimated Duties

Three commenters request the final rule expressly waive both duties and estimated duties imposed under 19 U.S.C. 1671, 1673, 1675, and 1677j, consistent with the direction of the Proclamation.

Response:

Upon consideration of these technical comments, Commerce acknowledges that the heading to proposed § 362.103(a) was titled “importation of applicable entries free of duties,” but the text of the proposed provision itself speaks to “the importation of Applicable Entries free of the collection of antidumping and countervailing *estimated duties* ...” and the Proclamation says that Commerce may allow importation “free of the collection of *duties* and *estimated duties*.” In light of the inconsistent terms in the proposed § 362.103(a), Commerce has amended the header of § 362.103(a) in this final rule to read “Importation of applicable entries free of *duties and estimated duties*” (emphasis added). Furthermore, Commerce has also amended the text of § 362.103(a) to apply to both “*duties and estimated duties*,” consistent with the terms used in the Proclamation.

18. Waive All Duties and Estimated Duties, Including from Future Investigations

Three commenters support Commerce’s *Proposed Rule* but argue that the final rule should more broadly and expressly waive duties and estimated duties under 19 U.S.C. 1671, 1673, 1675, and 1677j. These commenters argue that because the Proclamation expressly cited these authorities, the extension and waiver must apply to all AD/CVD measures and not only

circumvention findings. These commenters also argue that because the Proclamation cited these authorities, it necessarily also means that the waiver must apply to any requirements resulting from new AD/CVD petitions on solar products from the four subject countries.

Response:

In the *Proposed Rule*, and this final rule, Commerce has interpreted the Proclamation to call for action in connection with SA-Completed Cells and Modules. The Proclamation stated that immediate action is needed to ensure that the United States has access to a sufficient supply of solar modules to assist in meeting electricity generation needs. In that light, the Proclamation directed the Secretary to consider taking certain appropriate actions with respect to solar cells and modules exported from Cambodia, Malaysia, Thailand, and Vietnam that are not already subject to an antidumping or countervailing duty order as of the date of the Proclamation. At the time of the Proclamation, Commerce had, and continues to have, ongoing circumvention inquiries covering certain solar cells and modules exported from these Southeast Asian countries that were not already subject to an AD/CVD duty order as of the date of the Proclamation. There were not, and currently are not, AD and/or CVD petitions before Commerce involving certain solar cells and modules exported from these Southeast Asian countries. Accordingly, Commerce finds the question of hypothetical AD/CVD petitions to be beyond the scope of this final rule.

Additionally, Commerce disagrees that the inclusion of 19 U.S.C. 1671, 1673, 1675, and 1677j in the Proclamation requires the express waiver of duties related to all measures, including new investigations. The Proclamation directs Commerce to consider the waiver of “duties and estimated duties, if applicable, under §§1671, 1673, 1675 and 1677j.” The only duties and estimated duties that are potentially applicable in this circumstance – at least as more than a hypothetical – are those in connection with the ongoing circumvention inquiries, pursuant to section 1677j. Commerce does not believe that a citation to those provisions in the Proclamation necessitates addressing hypotheticals in the final rule.

19. Rules of Origin for CSPV Cells and Modules

Three commenters support Commerce's *Proposed Rule*, but specifically requested clarification and confirmation as to the applicable rules of origin for crystalline silicon photovoltaic cells and modules. They request that Commerce explicitly cite to existing precedent to avoid any confusion as to the correct rules. As the commenters note, Commerce has already analyzed the issue with respect to what stage of the manufacturing process is key for determining the "essential character" of a crystalline silicon photovoltaic cell and module. The commenters quote from Commerce's past scope rulings on the issue, which state that the "positive/negative junction that is needed for the conversion of sunlight into electricity" forms "the essential component of the solar cell," which means that wafers are not solar cells. The commenters assert that industry reasonably relies on predictability in the interpretation and administration of AD/CVD orders, including with respect to rules of origin and scope.

Response:

Commerce finds this summary to be an accurate representation of its practice with respect to the country-of-origin rules for Chinese crystalline silicon photovoltaic cells and modules, and we see no reason to otherwise restate our country-of-origin analysis for purposes of this final rule.

20. Expedited Liquidation

Two commenters state that the *Proposed Rule* should allow importers to request that Commerce instruct CBP to liquidate entries on an expedited basis. These commenters argue that, prior to liquidation, importers will be unsure of their final duty liability, causing uncertainty when investing in solar projects, and that requiring firms to wait 314 days or more for confirmation that these imports will not be retroactively subject to duties fails to address this need.

Response:

Commerce disagrees with these commenters. To provide relief for the emergency declared by the Proclamation, the final rule makes clear that duties and estimated duties will not

be collected on entries of SA-Completed Cells and Modules that entered the United States before the Date of Termination and that are used in the United States by the Utilization Expiration Date. It thus will provide sufficient certainty to market participants. The liquidation of any relevant entries will occur in the normal course, and there is no reason to expedite such liquidation.

21. Shipment Through Intermediary Countries

One commenter requests that the *Proposed Rule* clarify that duty-free treatment applies to the identified solar cells from the subject countries even if shipped through or assembled into modules in an intermediary country before importation to the United States. This commenter expressed concern that if imports from Cambodia, Malaysia, Thailand or Vietnam are shipped through or assembled in an intermediary country, they would not be considered “exported from” or “completed in” one of those four countries.

Response:

The final rule provides for duty-free treatment of crystalline silicon photovoltaic cells, whether or not assembled into modules, which are completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China, and subsequently exported from Cambodia, Malaysia, Thailand or Vietnam to the United States and not already covered by the China Solar Orders. For merchandise to benefit from this rule, it must be exported from those four countries. If a product is completed in one country and exported through an intermediary country, it may retain the country of origin of the country in which it was completed. However, if it is further assembled in another country, that merchandise will not be considered “exported from Cambodia, Malaysia, Thailand or Vietnam to the United States.” Consistent with the normal course, CBP may request clarification of Commerce’s instructions should questions about a particular entry arise. As such, Commerce does not find it necessary to revise the *Proposed Rule*. To be clear, if a SA-Completed Cell or Module is further assembled in a third country, that product will not be considered a SA-Completed Cell or Module for purposes of this final rule.

Classification

Executive Order 12866

The Office of Management and Budget has determined that this final rule is economically significant for purposes of Executive Order 12866. Commerce has considered the economic impact of this rulemaking, including information from commenters, as summarized below.

Regulatory Impact Analysis

The purpose of this final rule is to take action pursuant to the Proclamation under section 318(a) of the Act. The Proclamation identifies certain threats to the ability of the United States to provide sufficient electricity generation to serve expected demand, declares an emergency to exist, and states that immediate action is needed to ensure access to a sufficient supply of solar modules to assist in meeting the United States' electricity generation needs.

To address that need, this final rule is temporarily extending the time period for Commerce to direct CBP to suspend liquidation and collect cash deposits if there is a preliminary or final circumvention determination and is also temporarily removing the requirement that importers of SA-Completed Cells and Modules deposit estimated antidumping and countervailing duties, if otherwise applicable as a result of the circumvention inquiries. Further, this rule temporarily permits the importation of the SA-Completed Cells and Modules free of duties that may result from the ongoing circumvention inquiries under the antidumping and countervailing duty laws.

The EIA estimated in January 2022 that solar power would account for nearly half of new U.S. electric generating capacity for the year based on its expectation that U.S. utility-scale solar generating capacity would grow by 21.5 GW in 2022.⁷⁰ The EIA projects that the share of U.S.

⁷⁰ U.S. Energy Information Administration, *Solar Power Will Account for Nearly Half of New U.S. Electric Generating Capacity in 2022* (Jan. 10, 2022), <https://www.eia.gov/todayinenergy/detail.php?id=50818>.

power generation from renewables will increase from 21 percent in 2021 to 44 percent by 2050, and that solar will account for approximately 50 percent of renewable energy generation.⁷¹ Additionally, in September 2021, the DOE released the Solar Futures Study⁷² detailing the significant role solar will play in decarbonizing the nation's power grid. The study shows that, by 2035, solar energy has the potential to power 40 percent of the nation's electricity, drive deep decarbonization of the grid, and employ as many as 1.5 million people—without raising electricity prices. These longer-term projections, although not accounting for the additional effects of the Inflation Reduction Act, illustrate the growing importance of solar power. The new capacity additions provided by solar are essential to meeting the resource adequacy needs for the electricity system. However, the sum of domestic solar manufacturing plus solar imports is well below what the EIA predicts is necessary for electric utilities in the United States to meet the anticipated demand while domestic solar manufacturing scales up. According to the Department of Energy, continued shortage of solar equipment could reduce domestic solar deployment over the next year by 12–15 GW, enough to power over 2 million homes.⁷³ Most other power generation technologies cannot fill this void within such a short timeframe—for example, the time to build a natural gas plant ranges from 2 to 10 years.⁷⁴ Nor would conventional fossil-fuel plants provide the climate-impact benefits of solar power.

The United States is currently dependent on imports to enable solar capacity additions. As the Proclamation notes, the vast majority of solar modules installed in the United States in recent years were imported, with those from Southeast Asia making up approximately three-

⁷¹ U.S. Energy Information Administration, *EIA Projects that Renewable Generation Will Supply 44% of U.S. Electricity by 2050* (Mar. 18, 2022), <https://www.eia.gov/todayinenergy/detail.php?id=51698#:~:text=In%20our%20Annual%20Energy%20Outlook,ne w%20wind%20and%20solar%20power.;> see also DOE report at 2.

⁷² U.S. Dept. of Energy, *Solar Futures Study* (Sept. 2021), <https://www.energy.gov/eere/solar/solar-futures-study>.

⁷³ U.S. Dept. of Energy, *Acute Shortage of Solar Equipment Poses Risks to the Power Sector*, 1 (June 2022), available at <https://www.energy.gov/sites/default/files/2022-06/June%202022%20DOE%20Solar%20Market%20Update.pdf>.

⁷⁴ See, e.g., Seth Blumsack, *Basic Economics of Power Generation, Transmission and Distribution*, The Pennsylvania State University, available at <https://www.e-education.psu.edu/eme801/node/530>.

quarters of imported modules in 2020 alone⁷⁵ and two-thirds in 2020 and 2021 combined.⁷⁶ The nation's current domestic module production capacity comprises less than one-fourth of near-term market demand and less than one-tenth what would be required to meet the country's climate targets and energy security needs.⁷⁷

A public report by the USITC, Publication 5266, published in December⁷⁸ provides useful information about importers of CSPV solar cells and modules, including information about the class of entities directly regulated by this final rule. USITC Publication 5266 further estimated the total value of imports of CSPV cells and modules from all sources at over \$9 billion in 2020.⁷⁹ Information from USITC Publication 5266 shows that the leading sources of imported modules in both 2020 and 2021 were Malaysia, Vietnam, and Thailand.⁸⁰ Furthermore, USITC Publication 5266 and Census Bureau data show that Korea was the top source for imported CSPV cells in both 2020 and 2021, but CSPV cell imports from Malaysia, Vietnam and Thailand nearly doubled in 2021 compared to 2020,⁸¹ indicating that U.S. panel manufacturers became more reliant on solar cells from those countries.

A recent decline in imports of CSPV modules from Southeast Asia has exacerbated the discrepancy between available components and projected needs. Census Data indicate that total imports of modules from the four Southeast Asian countries that are the subject of this rule declined over 30 percent over January to June 2022 compared to the same time frame in 2021.⁸²

⁷⁵ U.S. Dept. of Energy, *Solar Photovoltaics: Supply Chain Deep Dive Assessment*, 2-3 (Feb. 24, 2022), available at <https://www.energy.gov/sites/default/files/2022-02/Solar%20Energy%20Supply%20Chain%20Report%20-%20Final.pdf>.

⁷⁶ See DOE Report at 2.

⁷⁷ U.S. Dept. of Energy, *Acute Shortage of Solar Equipment Poses Risks to the Power Sector*, 1 (June 2022), available at <https://www.energy.gov/sites/default/files/2022-06/June%202022%20DOE%20Solar%20Market%20Update.pdf>.

⁷⁸ U.S. International Trade Commission (December 2021), *Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products* (hereinafter, USITC Publication 5266). <https://www.usitc.gov/publications/other/pub5266.pdf>.

⁷⁹ USITC Publication 5266 at I-42. Note that these figures pertained to imports from all sources and were not specific to imports from the four Southeast Asian countries at issue in this final rule.

⁸⁰ USITC Publication 5266 at page V-8.

⁸¹ USITC Publication at page V-1 (2020 data only); <https://usatrade.census.gov/> for HS Code 8541.40.60.25 for 2020 and 2021.

⁸² Census Bureau data available at <https://usatrade.census.gov> for HTS codes 8541.40.60.15 and 8541.43.00.10, Second Unit of Quantity (watts) for the four selected countries.

Supply constraints on solar modules and module components have put at risk near-term solar capacity additions that could otherwise have the potential to help ensure the sufficiency of electricity generation to meet customer demands while domestic manufacturing capacity scales up. As noted previously, several large-scale solar installation projects have already reportedly been delayed due to an insufficient supply of components.⁸³ Although some commenters disputed the existence of an emergency, a number of other commenters representing the U.S. solar industry also reported that their or their members' projects had been delayed or that future projects were threatened.

USITC Publication 5266 provides information about solar projects that may be affected by difficulties in obtaining solar components and, more positively, by the measures in this final rule to address such difficulties. Based on questionnaire responses, purchasers of domestic and imported solar cells and modules were identified as utility companies/developers, commercial installers, residential installers, distributors, module assemblers, and "other" firms.⁸⁴ Among end user purchasers of solar cells and modules (i.e. installers or utility firms), 84.5 percent of their total projects completed in 2020 were estimated to be in the utility sector, while 8.6 percent were in the commercial sector, and 6.1 percent were in the residential sector. For purchasers that were distributors, an estimated 48.7 percent of their 2020 resales were to residential installers, 35.0 percent were to commercial installers, and 16.3 percent were to utility installers/developers.⁸⁵ Moreover, as commenters pointed out, the solar projects that may be indirectly impacted by this

⁸³ See response to Comment 4 and the cited sources: Tomich, Jeffrey, *Solar Market Turmoil Delays Ind. Coal Shutdown* (May 5, 2022), available at <https://www.eenews.net/articles/solar-market-turmoil-delays-ind-coal-shutdown/>; Salt River Project, *Coolidge Expansion Project FAQ, How does growing demand contribute to resource constraints?*, available at <https://www.srpnet.com/grid-water-management/grid-management/improvement-projects/coolidge-expansion-project-faq>. Office of the Governor of California, Letter to U.S. Department of Commerce Secretary Gina M. Raimondo (April 27, 2022), available at <https://s3.documentcloud.org/documents/21761581/newsom-letter.pdf>; Mangieri, Gina, *Power Cost Hike, Supply Crunch Ahead as Last Hawaii Coal Plant Closes* (June 24, 2022), available at <https://www.khon2.com/always-investigating/power-cost-hike-supply-crunch-ahead-as-last-hawaii-coal-plant-closes/>.

⁸⁴ USITC Publication 5266 at page I-45. "Other" firms included a developer/owner of commercial, residential, industrial and small-scale utility projects, a developer/owner of commercial, industrial and small-scale utility projects, a utility company/developer/financier, a solar project developer, a commercial an distributed generation developer, an end user and retailer, an engineering corporation, an "operator," a module manufacturer, an importer/distributor, and an "EPC of utility scale and rooftop solar."

⁸⁵ *Id.* at page I-46.

final rule account for a significant amount of employment. According to the National Solar Jobs Census 2021 published by the Interstate Renewable Energy Council (IREC), a total of 255,038 full time jobs exist in the solar sector. Of these, IREC identified 168,960 in the category “Installation and Project Development” and 33,099 in “Manufacturing.” The majority of installation jobs, 85,305 jobs, are in the residential sector, while commercial and utility-scale each represent about 20 percent of the total installation and development jobs with 34,329 and 33,808 jobs, respectively.⁸⁶

The intended impact of this final rule, with its temporary duration, is to encourage continued progress on such solar projects. In taking the actions in this final rule, Commerce is responding to the emergency declared by the Proclamation and removing uncertainty concerning potential antidumping and countervailing estimated duties or duties that might otherwise be owed on merchandise subject to the circumvention inquiries and entered before the Date of Termination. The uncertainty surrounding the potential antidumping and countervailing estimated duties or duties may be contributing to the insufficient imports of modules from Southeast Asia for future installations; DOE estimates that the current shortage of solar equipment could potentially reduce domestic solar deployment over the next year by 12–15 GW.⁸⁷ EIA data indicate that in the first half of 2022 only 4.2 GW of capacity for large-scale (1 megawatt or greater) solar photovoltaic installations became operational compared to 9.5 GW that were expected as of the end of 2021. The same data indicate that over 13 GW of large-scale solar PV is scheduled to be commissioned in the second half of 2022.⁸⁸ Meanwhile, in 2023 the capacity of solar additions could be over 25 GW, according to the data reported to the EIA.⁸⁹

⁸⁶ National Solar Jobs Census 2021, at page 19, available at <https://irecusa.org/programs/solar-jobs-census/>. A recent DOE study provides similar employment information for 2021, estimating 253,052 solar workers who spent 50 percent or more of their time on solar and 333,887 workers who spent any of their time on solar. See U.S. Dept. of Energy, *United States Energy and Employment Report* (June 2022) at 20, available at https://www.energy.gov/sites/default/files/2022-06/USEER%202022%20National%20Report_1.pdf

⁸⁷ See DOE Report at 3.

⁸⁸ Preliminary Monthly Electric Generator Inventory (based on Form EIA-860M as a supplement to Form EIA-860), June 2022 (published July 26, 2022) and December 2021 (published February 24, 2022), available at <https://www.eia.gov/electricity/data/eia860m/>.

⁸⁹ *Id.*

Given the strong interest in ensuring access to a sufficient supply of solar modules to assist in meeting the United States' electricity generation needs in a manner that addresses the threat of climate change and reduces dependence on fossil fuels, this final rule removes this source of market uncertainty in order to encourage sufficient imports of modules from these Southeast Asian countries until the Date of Termination and while efforts are made to expand domestic capacity.

Thus, Commerce assesses that the benefits of this final rule derive from the need for immediate action to ensure access to a sufficient supply of solar modules to assist in meeting the United States' electricity generation needs while reducing the burning of fossil fuels, which drives climate change and presents a threat to national security. Helping ensure that planned solar projects can proceed also supports the jobs required for those projects.

Commerce has also assessed the anticipated costs that may accompany adoption of the rule.

The direct costs of this final rule on regulated entities, Commerce has concluded, are minimal. The rule provides for an exemption from the collection of cash deposits and duties, if applicable, on imports of certain SA-Completed Cells and Modules. The affected importers would not need to take additional action to come into compliance with this rule.

This final rule might result in decreased totals of AD or CVD duties collected, but the quantification of any such decrease would be speculative. At the time of publication of this final rule, Commerce is conducting circumvention inquiries involving certain cells and modules exported from the Southeast Asian countries of Cambodia, Malaysia, Thailand, and Vietnam. Commerce has not yet made any determinations regarding whether these cells and modules are circumventing existing antidumping and countervailing duty orders. Accordingly, whether antidumping or countervailing duties will apply to these cells and modules is unknown at the time of publication of this final rule. Even if there is a final determination that circumvention is

taking place, the total antidumping and countervailing duties that would be collected from any such imports cannot, at this time, be calculated with any degree of precision.

Commerce also recognizes that there are likely to be costs associated with indirect impacts of this final rule, in particular those that may affect domestic producers of cells and modules, whose products compete with the imports at issue in this rule. Based on responses from 14 firms reporting domestic production of solar cells and/or modules, USITC Publication 5266 identified domestic manufacturers located across 11 states.⁹⁰ At the time of publication in 2021, there were approximately 20 domestic plants manufacturing solar modules, with nine additional plants having been publicly announced;⁹¹ in addition, plans for three plants to manufacture solar cells had been announced or were under consideration.⁹² A number of commenters pointed out the potential harm to domestic producers from allowing imports to enter the United States without otherwise applicable AD/CVD duties, including the possible loss of U.S. jobs.

The rule, however, has been crafted to limit these indirect costs. The rule's scope is constrained, applying only to solar cells and modules exported from the four identified countries that may be the subject of affirmative preliminary or final determinations in certain circumvention inquiries currently before Commerce. At least as significantly, the rule only temporarily extends the period for Commerce to direct CBP to suspend liquidation and collect cash deposits and further only temporarily lifts the requirements of importers to make deposits on relevant items and to pay otherwise applicable duties that may result from the ongoing circumvention inquiries; these measures will be in place for a maximum of 24 months from the date of the Proclamation, may be ended earlier if the emergency has terminated before that date. More than that, for entries that enter after the effective date of this rule, these measures will not apply if the entries are not used by the Utilization Expiration Date. These limitations reflect an

⁹⁰ *Id.* at page I-37.

⁹¹ *Id.* at page I-26 to I-28.

⁹² *Id.* at page I-23 to I-24.

effort to ensure a needed supply of solar components in the short-term while at the same time limiting costs to domestic producers and supporting efforts to expand domestic production capacity by the Date of Termination.

In conclusion, in evaluating the overall impact of this final rule, Commerce assesses that the benefits of the rule, which provides for immediate action to ensure access to a sufficient supply of solar modules, will help meet U.S. electricity generation needs while addressing threats posed by climate change and are likely to significantly outweigh the anticipated costs that may accompany adoption of the rule.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires agencies to consider the impact of their rules on small entities and to evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities when the rules impose a significant economic impact on a substantial number of small entities.

In the *Proposed Rule*, Commerce prepared an initial regulatory flexibility analysis, concluding that the proposed action was not expected to have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. Additionally, Commerce concluded there were no regulatory alternatives for reducing burdens on small entities. After considering the comments received in response to the initial regulatory flexibility analysis, Commerce's conclusions on these points remain unchanged in this final regulatory flexibility analysis.

Need for and Objectives of the Rule

A summary of the need for, objectives of, and legal basis for this rule is provided in the preamble of this final rule and is not repeated here.

Number of Small Entities to Which the Rule Will Apply

Commerce continues to expect that this rule will not have a significant economic impact on a substantial number of small entities directly regulated by the final rule. The direct

economic impacts of the actions described in this rule are for importers of SA-Completed Cells and Modules for which certain regulations, if applicable, are extended and waived and who for a limited period of time need not pay AD/CVD duties and estimated duties, if otherwise owed as a result of the circumvention inquiries.

At the time the *Proposed Rule* was published, Commerce was unable to estimate the number of small entities to which the rule would apply. In this final regulatory flexibility analysis, Commerce relies on information about importers of solar CSPV cells and modules in USITC Publication 5266 to describe the class of entities directly regulated by the final rule.

Based on that report, Commerce has determined that importers of solar cells or modules may be classified as operating in one of the following industries as described by the 2020 North American Industry Classification System (NAICS): Power and communication line and related structures construction (NAICS code 237130); Semiconductor and related device manufacturing (NAICS code 334413); or Miscellaneous Electrical Component Manufacturing (NAICS code 335999).

Commerce reviewed the list of 50 importers in Table I-15 of USITC Publication 5266, and was able to identify the NAICS code for 48 importers as shown in Table 1 below, based on publicly available information about the companies. According to the USITC, the importers in Table I-15 accounted for 66.5 percent of total imports of cells and modules but were a subset of 264 firms identified as possible importers by the USITC.

Table 1: Industries of Importers of CSPV Cells and Modules

NAICS codes	334413	237130	335999
	Manufacturer	Developer	Miscellaneous Electrical Component Manufacturer

Large	23	6	1
Small	13	0	5
Total	36	6	6

Source: Department of Commerce, International Trade Administration analysis of USITC Publication 5266 Table I-15.

The Small Business Administration has determined that the size standard for identifying small entities in the Power and communication line and related structures construction industry (NAICS code 237130) is maximum annual receipts of \$39.5 million. The small entity size standard for Semiconductor and related device manufacturing (NAICS code 3334413) is a maximum of 1,250 employees. The small entity size standard for Miscellaneous Electrical Component Manufacturer is 500 employees. When the parent company was a large entity, Commerce classified those importers as large entities.

As shown in Table 2 below, a breakdown of the comparison of large and small entities based on which products they imported shows that 30 were large entities and 18 were small entities. Importers of modules, had the lowest share of small entities, with roughly two-thirds of the importers being large companies.

Table 2: Large and Small Importers, by Products Imported

Products Imported	Importers	
	Large	Small
Cells and Modules	4	2
Cells only	5	6
Modules only	21	10

Source: Department of Commerce, International Trade Administration analysis of USITC Publication 5266 Table I-15.

In addition to the 18 small entities Commerce identified in Table I-15, Commerce assumes that the remaining 214 importers initially identified by USITC as possible importers but

not included in Table I-15 were all importers and accounted for the remaining 33.5 percent of imports of cells or modules. Commerce further assumes that all of these importers are small entities, bringing the total to 232 small entities, around 88 percent of all importers that USITC may have identified. Commerce believes that the estimate of small entities directly affected by this rule is based on conservative assumptions and that the actual number is likely to be smaller, as some of the 214 importers may not be importers of cells or modules and, among those who were importers, some may not be small entities.

Furthermore, the information in USITC Publication 5266 pertains to importers of cells and modules from all sources, while the entities directly affected by this rule are importers of cells and modules from the four Southeast Asian countries at issue and may be a subset of all importers.

To compare the USITC list to the total possible universe of importers for CSPV cells and modules, Commerce obtained from CBP a count of the importers during the same time frame.

This information is summarized in Table 3 below:

Table 3: Number of Importers (Harmonized Tariff Schedule Data)

Product Description	Number of Importers
CSPV Assembled Modules/Panels	397
CSPV Cells	147
CSPV Modules and Cells	45
Total Importers	499

Source: U.S. Customs and Border Protection analysis of Harmonized Tariff Schedule data Harmonized System Product Codes 8541406015 and 8541406025, Entry Date 2020.

In Table 3, the number of importers listed for the three categories does not sum to the total number of importers, because of the need to avoid double counting. Those who import both CPSV Modules and Cells are included in both “CSPV Assembled Modules/Panels” importers and “CSPV Cells” importers. Thus, the total number of importers is $(397+147) - 45$.

Taking into account that some companies imported both cells and modules, the total number of importers in 2020 for the two products combined is 499 entities. Assuming that, as for the importers identified in USITC Publication 5266, 88 percent of the importers are small businesses, approximately 440 of these importers would be small entities. Therefore, using both the analysis of importers from USITC Publication 5266 and the analysis of Harmonized Tariff Schedule data, Commerce estimates that the number of small entities directly impacted by this final rule ranges from 232 to 440 importers.

Description of Reporting, Recordkeeping and Other Compliance Requirements

This rule has no reporting, recordkeeping, and other compliance requirements and does not duplicate, overlap, or conflict with other Federal Rules.

Steps the Agency has Taken to Minimize the Significant Economic Impact on Small Entities

Under this rule, Commerce will temporarily waive and extend the application of certain regulations, if otherwise applicable, involving SA-Completed Cells and Modules. Specifically, by temporarily removing the requirement that importers deposit estimated AD/CVD duties, if otherwise applicable as a result of the circumvention inquiries, Commerce removes actions that would otherwise be required from entities, including small entities, that are importing SA-Completed Cells and Modules. Further, this rule would temporarily permit the importation of certain solar cells and modules from the four Southeast Asian countries at issue free of duties that may result from the ongoing circumvention inquiries under the AD/CVD duty laws. In this way, until the Date of Termination, the rule provides importers with relief from possible AD/CVD duties and estimated duties that might otherwise be owed as a result of the ongoing circumvention inquiries. These benefits are speculative at this point, but even if they come to

fruition, Commerce believes that there is no significant competitive disadvantage to importers of the products at issue in this rule, including importers that are small entities.

These actions under this rule do not add burden on importers, including importers that are small entities, in connection with their importation of certain solar cells and modules from the four Southeast Asian countries. Rather, they remove requirements that might otherwise be applicable and, therefore, do not result in significant economic impact to them. Further, this rule removes uncertainty as to whether AD/CVD duties may apply before the Date of Termination as a result of the ongoing circumvention inquiries. For all of these reasons, Commerce continues to believe that there is no significant, adverse economic impact on importers of the merchandise, including importers that are small entities.

The actions in this rule to respond to the emergency declared by the Proclamation apply specifically to SA-Completed Cells and Modules, which are the certain cells and modules identified in the Proclamation. Accordingly, Commerce is appropriately responding to the emergency declared in the Proclamation and uses the authorities provided in the Proclamation, as well as its own authorities, in a way tailored to the Proclamation and emergency declared therein. Commerce has taken appropriate steps to minimize any significant economic impact on small entities consistent with the stated objectives of the Proclamation and believes that there is no regulatory alternative that would reduce any such impact. Further, in the event that there are impacts on small entities due to the importation free of AD/CVD duties or estimated duties, or due to the extension of time to perform any act, any such impact is provided for and contemplated in the relevant statutory authority, section 318(a) of the Act, and the Proclamation.

Significant Issues Raised by Comments on the Initial Regulatory Flexibility Analysis

1. Impact on small entities other than importers: Several commenters stated that the small entity analysis in the proposed rule failed to properly consider the impact of the rule on small entities other than importers and should have considered the impact on domestic producers of cells and modules or others in the supply chain. These commenters also suggested that Commerce failed

to consider alternatives that would be less burdensome to such small entities, in particular, the use of the procedures set out in the regulations at 19 CFR Part 358.

Response: The RFA's requirement to conduct initial and final regulatory flexibility analyses, including the requirements to "describe the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements" and to describe "the steps the agency has taken to minimize the significant economic impact on small entities"⁹³ has been held to apply only to those small entities that are subject to the requirements of the rule and not to other entities on which the rule may have indirect effects.⁹⁴ In the case of this final rule, the directly regulated entities are importers of cells and modules, for whom this final rule represents the potential for relief from duties. Thus, the RFA does not require Commerce to consider in this Final Regulatory Flexibility Analysis the indirect effects on domestic producers of cell and modules or other small entities or whether regulatory alternatives such as application of the provisions at 19 CFR Part 358 regulation would be less burdensome for such entities.

Nevertheless, Commerce has included a discussion of indirect impacts in the Regulatory Impact Analysis.

2. Number of small entities who are importers: Several commenters also suggested that Commerce failed to conduct a sufficient analysis of the impact on small importers by stating that the number of small importers was unknown and by failing to recognize that some importers are large entities.

Response: In the proposed rule, Commerce requested information about the impact of the proposed rule on small entities, and several commenters provided additional information. In

⁹³ 5 U.S.C. 603-604.

⁹⁴ *Mid-Tex Elec. Co-op, Inc. v. FERC*, 777 F.2d 327, 342 (D.C. Cir. 1985); see also *American Trucking Associations, Inc., v. EPA*, 175 F.3d 1027, 1044 (D.C. Cir. 1999), *aff'd in part and rev'd in part on other grounds*, *Whitman v. American Trucking Ass'ns*, 531 U.S. 457 (2001).

this Final Regulatory Flexibility Analysis, Commerce has provided an estimate of the number of small importers who may be directly impacted by this final rule.

Congressional Review Act

Pursuant to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801-808, the Office of Information and Regulatory Affairs has determined that this final rule is a major rule, as defined in 5 U.S.C. 804(2).

Commerce is therefore delivering a report containing the rule and associated information to each House of Congress and to the Comptroller General and delaying the effective date of the rule for 60 days. *See* 5 U.S.C. 801(a).

Paperwork Reduction Act

This final rule contains no information collection subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act

This final rule will not produce a Federal mandate under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

List of Subjects in 19 CFR Part 362

Administrative practice and procedure, Antidumping duties, Countervailing duties, Emergency powers.

Dated: September 12, 2022.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce amends 19 CFR chapter III by adding part 362 as follows:

**PART 362—PROCEDURES COVERING SUSPENSION OF LIQUIDATION, DUTIES
AND ESTIMATED DUTIES IN ACCORD WITH PRESIDENTIAL PROCLAMATION
10414**

Sec.

362.101 Scope.

362.102 Definitions.

362.103 Actions being taken pursuant to Presidential Proclamation 10414 and Section 318(a) of the Act.

362.104 Certifications.

Authority: 19 U.S.C. 1318; Proc. 10414, 87 FR 35067.

§ 362.101 Scope.

This part sets forth the actions the Secretary is taking to respond to the emergency declared in Presidential Proclamation 10414.

§ 362.102 Definitions.

For purposes of this part:

Act means the Tariff Act of 1930, as amended (19 U.S.C. 1202 et seq.).

Applicable Entries means the entries of Southeast Asian-Completed Cells and Modules that are entered into the United States, or withdrawn from warehouse, for consumption before the Date of Termination and, for entries that enter after **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, are used in the United States by the Utilization Expiration Date.

CBP means U.S. Customs and Border Protection of the United States Department of Homeland Security.

Certain Solar Orders means Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final

Determination of Sales at Less Than Fair Value, and Antidumping Duty Order; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order; and Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order.

Utilization and *utilized* means the Southeast Asian-Completed Cells and Modules will be used or installed in the United States. Merchandise which remains in inventory or a warehouse in the United States, is resold to another party, is subsequently exported, or is destroyed after importation is not considered utilized for purposes of these provisions.

Utilization Expiration Date means the date 180 days after the Date of Termination.

Date of Termination means June 6, 2024, or the date the emergency described in Presidential Proclamation 10414 has been terminated, whichever occurs first.

Secretary means the Secretary of Commerce or a designee.

Solar Circumvention Inquiries means some or all of the inquiries at issue in Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders.

Southeast Asian-Completed Cells and Modules means crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, or the Socialist Republic of Vietnam using parts and components manufactured in the People's

Republic of China, and subsequently exported from Cambodia, Malaysia, Thailand or Vietnam to the United States. These are cells and modules subject to the Solar Circumvention Inquiries. Southeast Asian-Completed Cells and Modules does not mean solar cells and modules that, on June 6, 2022, the date Proclamation 10414 was signed, were already subject to Certain Solar Orders.

§ 362.103 Actions being taken pursuant to Presidential Proclamation 10414 and Section 318(a) of the Act.

- (a) *Importation of applicable entries free of duties and estimated duties.* The Secretary will permit the importation of Applicable Entries free of the collection of antidumping and countervailing duties and estimated duties under sections 701, 731, 751 and 781 of the Act until the Date of Termination. Part 358 of this chapter shall not apply to these imports.
- (b) *Suspension of liquidation and collection of cash deposits.* (1) To facilitate the importation of certain Southeast Asian-Completed Cells and Modules without regard to estimated antidumping and countervailing duties, notwithstanding § 351.226(l) of this chapter, the Secretary shall do the following with respect to estimated duties:
 - (i) The Secretary shall instruct CBP to discontinue the suspension of liquidation of entries and collection of cash deposits for any Southeast Asian-Completed Cells and Modules that were suspended pursuant to § 351.226(l) of this chapter. If at the time instructions are conveyed to CBP the entries at issue are suspended and cash deposits collected only on the basis of the circumvention inquiries, then the Secretary will direct CBP to liquidate the

entries without regard to antidumping and countervailing duties and to refund cash deposits collected on that basis.

(ii) In the event of an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries before the Date of Termination, the Secretary will not, at that time, direct CBP to suspend liquidation of Applicable Entries and collect cash deposits of estimated duties on those Applicable Entries.

(iii) In the event of an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries, the Secretary will direct CBP to suspend liquidation of entries of, and collect cash deposits of estimated duties on, imports of Southeast Asian-Completed Cells and Modules that are not Applicable Entries.

(2) In the event that the Secretary makes an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries, as applicable, and the emergency described in Presidential Proclamation 10414 is terminated before June 6, 2024, notwithstanding § 351.226(l) of this chapter, upon notification of the termination of the emergency the Secretary will thereafter issue instructions to CBP informing it of the Date of Termination and directing it to begin suspension of liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate for each unliquidated entry of Southeast Asian-Completed Cells and Modules that is entered, or withdrawn from warehouse, for consumption on or after an appropriate date that is on or after the Date of Termination. For purposes of this paragraph, Applicable Entries may also include certain entries of Southeast Asian-Completed Cells and Modules that are entered on or after the Date of Termination, as appropriate.

(3) In the event that the Secretary makes an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries, as applicable, and the Date of Termination is June 6, 2024, notwithstanding § 351.226(l) of this chapter, the Secretary will issue instructions to CBP informing it that the Date of Termination is June 6, 2024, and will direct CBP to begin suspension of liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate, for each unliquidated entry of Southeast Asian-Completed Cells and Modules that is entered, or withdrawn from warehouse, for consumption on or after the Date of Termination.

(c) *Waiver of assessment of duties.* In the event the Secretary issues an affirmative final determination of circumvention in the Solar Circumvention Inquiries and thereafter, in accordance with other segments of the proceedings, pursuant to section 751 of the Act and § 351.212(b) of this chapter, issues liquidation instructions to CBP, the Secretary will direct CBP to liquidate Applicable Entries without regard to antidumping and countervailing duties that would otherwise apply pursuant to an affirmative final determination of circumvention.

§ 362.104 Certifications.

Nothing in this section shall preclude the Secretary from requiring certifications for Southeast Asian-Completed Cells and Modules pursuant to § 351.228 of this chapter in the event of an affirmative preliminary or final determination in the Solar Circumvention Inquiries.